This is a reproduction of a library book that was digitized by Google as part of an ongoing effort to preserve the information in books and make it universally accessible.

Google™ books

https://books.google.com

Digitized by Google

AP
ATC
RS
v.1

Digitized by Google

Digitized by Google

AP
ATC
RS v.
v. 1

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

A

VERBATIM REPORT

OF THE CAUSE

DOE DEM.

TATHAM *v.* WRIGHT,

TRIED AT THE

LANCASTER LAMMAS ASSIZES,

1834,

BEFORE

MR. BARON GURNEY AND A SPECIAL JURY.

BY ALEXANDER FRASER,

OF CLIFFORD'S INN,

THE ACCREDITED REPORTER IN THE CASE.

VOL. I.

LANCASTER:

PUBLISHED BY WILLIAM BARWICK;

AND BY ARTHUR FOSTER, KIRKBY LONSDALE.

SOLD IN LONDON BY SIMPKIN AND MARSHALL; OLIVER AND BOYD, EDINBURGH;

BANCKS AND CO. MANCHESTER; AND MARPLES AND CO. LIVERPOOL.

1834.

Digitized by Google

LANCASTER:

PRINTED BY WILLIAM BARWICK, MARKET-STREET.

Digitized by Google

Digitized by Google

Digitized by Google

WILL CAUSE.

LANCASTER CASTLE,

Saturday, August 23, 1834.

BEFORE MR. BARON GURNEY AND A SPECIAL JURY.

PROCEEDINGS ON THE TRIAL OF THE CAUSE, DOE ON THE DEMISE OF

TATHAM *v.* WRIGHT.

SPECIAL JURY SWORN.

RYLE HULME, Merchant, Manchester.
JOHN SMITH, Merchant, Chorlton-upon-Medlock.
WILLIAM HILL, Merchant, Salford.
PETER AINSWORTH, Esq. Halliwell.
JAMES MEADOWS, Merchant, Chorlton-upon-Medlock.
JOHN MORLEY, Merchant, Chorlton-upon-Medlock.
JAMES HIBBERT WANKLYN, Merchant, Chetham.
EDMUND GRUNDY, Merchant, Bury.
JOHN LEES, Esq. Oldham.
RICHARD ASHTON, Merchant, Bury.
JOHN CARVER, Merchant, Pendleton.
JOHN PYNE, Merchant, Chorlton-upon-Medlock.

Mr. ARMSTRONG, in opening the pleadings, stated that Sandford Tatham was the plaintiff, and George Wright the defendant. The declaration was in ejectment to recover possession of the Manor of Hornby, in the county of Lancaster, containing divers messuages and lands, with the rights and appurtenances thereto

Digitized by Google

belonging and appertaining. Also the manorial rights, tithes of corn, grain, hay, grass, &c. within the said manor, as also the manor of Tatham, in the said county, and the rectory of the parish church of Tatham aforesaid, together with the tithes of corn, grain, &c.; also divers messuages, cottages, and buildings, in the county aforesaid, out of all which premises it was alleged that the defendant had ejected the plaintiff, and wrongfully kept him out of possession of the same. To this the defendant had pleaded not guilty, and that was the question which the jury had to try.

THE ATTORNEY-GENERAL OF THE COUNTY PALATINE OF LANCASTER, Mr. POLLOCK.—May it please your Lordship—Gentlemen of the jury—on the part of the defendant I rise to admit that the lessor of the plaintiff is heir-at-law, and that the testator, John Marsden, died seized of the premises sought to be recovered by this action of ejectment. For the defendant, as I seek to set up the will executed by the testator, I am therefore entitled to begin to address you and his lordship. Gentlemen, although I be counsel for the defendant, admitting, as I do, that the lessorof the plaintiff is the heir-at-law of Mr. John Marsden, the testator, whose will you are to enquire into, I have a right to begin, because it is incumbent upon me to make out that he made a will, and that the heir-at-law has no title to the property in consequence of that will.

Gentlemen, in rising to address you on behalf of the defendant, who is a trustee, partly for his own interest, and partly for the interest of others, I do not intend to enter into any preliminary observations of any sort whatever. I shall just call to your attention the general nature of the question you are to try, remarking only, that it must be ultimately decided by your opinion on certain facts which it becomes necessary to detail. I shall proceed to state them, making only such remarks, and as I proceed in my address to you, as the immediate circumstances of the case may render it necessary. I shall enter into no general discussion of any sort whatever. I shall take it for granted that in this case which we are to try, you come to the question at issue perfectly well understanding the nature of the subject we are to discuss; and that all general remarks, at least for the present, would be entirely thrown away; and, therefore, I shall address myself to the real transactions in the cause, and proceed to the statement of those facts which by and bye may be given you in evidence, and thereby the more shall I consult your convenience and my own by so doing. I therefore, in the first place, proceed to state who the parties are who are interested in this cause, and to give you a short history of the gentleman whose will you are to enquire into.

Admiral Tatham, the lessor of the plaintiff, was the first cousin of John Marsden, who died in the year 1826, and who left a will comprising the property which is the subject of the present en-

Digitized by Google

Digitized by Google

Digitized by Google

quiry. Mr. George Wright was his steward and friend for many years, and is a trustee under his will for a Mr. Lister, who is the rector or vicar of Gargrave, and his son, both of whom I consider myself, more especially to be my clients. Mr. Lister, who has now taken the name of Marsden for some years, in pursuance of the directions of the will, was a very near relation of the deceased, not quite so near, however, as the Admiral, who is the heir-at-law; instead of being the first cousin, Mr. Lister Marsden is the second cousin, but they had lived near each other on the most intimate terms. They were regularly in the habit of passing much time at each other's houses. Mr. Marsden spent some portion of every year at the residence of his relation Mr. Lister (now Marsden), and the family of Mr. Lister Marsden spent a portion of the year at Hornby Castle, the residence of the late Mr. John Marsden.

Gentlemen, the question at issue does not present a case of property, left away from the natural objects of one's regard, esteem, and friendship, namely, the relations in blood of the testator, by the selection of a perfect stranger; here, instead of a first cousin, was the selection of a second cousin, the one being descended from a second grandfather, and the other from the first grandfather. Mr. Marsden was born in the year 1758; that is a very long time ago, and I must at the outset tell you, as an apology for any length of time I may occupy in the statement I may make, as a ground for soliciting your indulgence, and when I make that demand upon your patience, I must inform you that this enquiry involves literally the whole of Mr. Marsden's life. Every thing that he has said from the time that he could lisp or stutter—every correspondence he ever had—every act he ever did, will become necessary to be detailed to you, and, therefore, in a great part of what I have to pursue in this enquiry, I must say, from past experience, I know spreads itself over all the life of a gentleman who lived nearly for seventy years. It is not in a very short space of time, therefore, that I can take upon myself to state to you all the circumstances which must be brought forward to your attention.

Mr. Marsden had the misfortune to lose his father within a very few years of his own birth, certainly he did not survive beyond four or five years; at that time, the family consisted of an elder brother, Henry, who inherited the father's estate, and himself, John, being the younger son. Where the parties exactly lived—what was the precise state of the family, at that early period, it would not be easy to ascertain; but I collect from the evidence given upon former occasions, and that which I am prepared to lay before you now, there can be no doubt that a part of the youth of John Marsden was spent at a school in Lancaster, and partly at a school at Kirkby Lonsdale, and when he came to the age of maturity he seems to have resided with his brother, at the family

Digitized by Google

estate, which was then Wennington Hall, in this county. When he was about twenty-two years of age, namely, in the year 1780, (his elder brother being 24,) his elder brother died, I believe, of a consumption, as will appear by the evidence. He died intestate, thereby leaving to his younger brother the whole of the property he had inherited from their common father. At that time, the family consisted of a Mrs. Cookson, who was the aunt of Henry and John, who had conducted the concerns of the family when Henry was alive, and who continued to do so for John, after his death. I think the brother of Admiral Tatham was then a member of the family, which will appear, not only from the evidence of the living witnesses, but from the correspondence which will be laid before you, contemporaneously taking place, and I think also a Miss Tatham was living in the family, and probably as a companion to Mrs. Cookson. She was a cousin of Admiral Tatham, and these constituted the family at Wennington Hall.

Some time after the death of Henry Marsden, which occurred in the year 1780, an opportunity presented itself of making an advantageous purchase of a large estate, in the immediate neighbourhood of Wennington, and accordingly, you will find a treaty and negociation, and a good deal of correspondence in which John Marsden, the testator, bore a certain part; and, finally, in the year 1787, a treaty was made for the sale of Hornby Castle, by Lord Elcho's trustees, and John Marsden then became the purchaser. Wennington Hall, together with the Manor of Bradford, and the Advowson of Gargrave, and a good deal of property in Yorkshire, was sold in order to raise the money to purchase Hornby Castle, and a considerable sum remained upon mortgage, borrowed of different parties. The securities by those mortgages were frequently changed, but not to such an extent as to pay off the whole incumbrances. Those were not paid off when the securities had been changed from different persons, or to new mortgagees, so that there remain debts due at this present moment amounting to £28,000, on mortgage, upon the Hornby property, the property sought to be recovered by this action of ejectment.

Gentlemen, the purchase of this estate having been made in 1789, the family removed to reside at Hornby Castle in 1793. After that removal, Henry Tatham, the brother of Admiral Tatham, was no longer domesticated in the family; he was a gentleman of the profession of the law, and became Clerk of the Peace. He then no longer resided in the family, but resided at Hornby, near the Castle. Mrs. Cookson had died in 1791. This applies to the period before the removal of the family to Hornby Castle. Miss Tatham died at a much later period, namely, in 1809, and the family continued to occupy Hornby Castle down to the date of Mr. Marsden's death in 1826. You must have perceived, gentlemen, by this statement, that Mr. Marsden must have been a party to a great

Digitized by Google

Digitized by Google

Digitized by Google

deal of business; that he must have been often seen by many persons; that he must have negociated and talked with many persons, and much must have been done rather of an important character, and probably of some weight, at all events of greater weight than ordinarily falls to the lot of most of us in ordinary life.

In the year 1826, Mr. Marsden died. The moment his death was announced, as Mr. Sharp will tell you, when he was reading the note which came from Hornby Castle to announce the death of Mr. Marsden, and before he had finished the reading of it, there came a notice from Admiral Tatham not to allow the will to be proved; shortly after a bill was filed, there was a commission sitting in this town for five or six weeks in order to examine witnesses. An answer was put in to that bill, and the cause came on for hearing. The usual order or direction was given that an issue should be tried *devisavit vel non*, and that came on for trial at the Yorkshire Summer Assizes, in the month of April, 1830. That trial occupied a very considerable length of time, and lasted for six days, of about fourteen hours each, and it might well do so—I make no complaint. Gentlemen, I was then for the plaintiff, Mr. Wright, (the other party being then the defendant.) I appeared for the plaintiff, the present defendant, in the character of sustaining the will, as I do upon this occasion. I, who am now for the defendant, am seeking the protection of that will, but in point of fact the substance of the enquiry of to-day is pretty much of the same nature as it was then. On that occasion, after a very long and laborious investigation, witnesses were examined as to circumstances commencing from the very earliest period of Mr. Marsden's life, at least from his being a boy to the latest hour he lived; all his transactions of every sort were brought before a jury, and in the result, the verdict was that the will was held to be valid; in other words, that it was Mr. Marsden's will. An application was afterwards made for a new trial. The Master of the Rolls, Sir John Leach, heard the arguments on both sides, and decided that he could not grant a new trial. There was an appeal from that decision to the present Lord Chancellor, who having been counsel in the cause, of course declined hearing it himself, and Lord Lyndhurst, the Chief Baron, and Mr. Justice Tyndal, of the Common Pleas, sat along with his Lordship and heard the whole evidence, and after hearing that, and all the arguments that could be urged both for the plaintiff and the defendant, those judges decided that there was no ground for an appeal, and refused a new trial. It was then open, certainly, to Admiral Tatham to bring an ejectment, which he immediately did, and that cause came on here for trial in the Spring Assizes of last year: that second trial undoubtedly turned out to be abortive, and I say it with the most perfect sincerity, that I throw no blame upon any one but myself for the course which that trial took. I throw none upon my learned friend Sir James Scarlett, and still less can I throw it

Digitized by Google

upon the learned judge who tried the cause. It may be that perhaps taking the most bold step that ever was taken in conjunction with my friends, I persisted in a course that was thought erroneous. It, however, turned out not to be so. The view we had taken was afterwards confirmed, and entirely sanctioned, not only by the opinions of the learned judges (sitting in error), but by a great many who heard the arguments. I am now going to finish that enquiry that was then abruptly broken off, but still we must proceed from the beginning once more.

Now, Gentlemen, having given you this short outline of Marsden's life as meagrely as possible (for I have given you nothing but a few dates of the most important events connected with his life), you will find from time to time he made various wills, and at length the present one was made in 1822—the codicil in 1825. There were other wills made in the year 1815, and, indeed, there were previous wills at some other period. Be the dates of these wills what they may, we have distinct evidence that he made three or four wills at least; and supported as they were by other circumstances, there was not the slightest reason for imputing any exceptions to them. Gentlemen, we have depositions as to those wills; we have evidence as to each of those wills which I shall by and bye lay before you, but I only now endeavour to give you as meagre, as low, and as cold a statement as I possibly can of the facts that are connected with the last one that he made. I do not pledge myself that it is possible to continue the same down throughout the whole of my statement, but I assure you as far as I can I shall confine myself merely to such facts as I can indisputably prove, and to those remarks that naturally and justly arise out of those facts I shall state.

Gentlemen, there are three measures or divisions of the case to which I shall beg leave to call your attention, and which I now proceed to do. In the first place, there are the deeds to which Mr. Marsden was a party, shewing the persons with whom he was treating, and their knowledge of his character. The individuals by whom those deeds were prepared were persons of high reputation as professional men, and, besides these, there are the witnesses to those deeds, which occurred through a long life of upwards of sixty-eight years, whose signatures bear testimony to his character: and I shall now endeavour rapidly to state to you the nature of those transactions and the result of them as bearing upon the present case. Gentlemen, you will perhaps be surprised when I tell you that the number of conveyances which Mr. Marsden executed in favour of other persons, including mortgages, are no less than seventy-four different deeds, and that the total consideration of which deeds was no less a sum than £115,000, adding them all up together. The conveyances executed to Mr. Marsden were no less than seventy-three, and the total consideration was somewhere between £79,000 or

Digitized by Google

Digitized by Google

Digitized by Google

£80,000. Hornby Castle, and the property connected with it, alone being £53,000. In the course of that time having occasion to raise money, but always wanting it again from time to time, we shew the intent of the mortgages, and that money was raised upon them occasionally as well as upon bonds, which bonds amounted to no less than thirty-two, and the consideration was £24,680. The total consideration in these different instruments has been no less than £212,000 odd. Now in this stage of the case I beg to state that the parties who have been implicated in these different transactions, amount in point of number, when added together, to no less than 179. Many of these parties were concerned twice over; but notwithstanding that, there are one hundred and seventy-nine different parties concerned in those instruments, some of them as executing a bond, or rather receiving a bond from Mr. Marsden; or executing a mortgage, or concerned in other instruments. Of course he is not among those accounted as named twice over; and there are, therefore, one hundred and seventy-nine different parties. There are no less than fifty-eight attesting witnesses to these instruments, and adding all those together will make a total of two hundred and thirty-seven persons. I believe it will be made out to your entire satisfaction, as well from internal evidence of the deeds themselves as from positive testimony to be brought before you, that there were no less than from a hundred to one hundred and fifty persons out of the number (I am sure I understate it, but I am anxious if I err that it should be on that side)—certainly from a hundred to one hundred and fifty of these different persons perfectly well knew him; had dined with him, and had lived with him, conversed with him, and some of them lived in the neighbourhood, and as to whose means of knowledge of the sort of person with whom they were treating, there cannot be the least possible doubt. I shall come by and bye to the act which I impinge, that must have been done upon the indemnity of any man of business, who would not compromise the characters of others any more than as men of business they would compromise their own characters: any man who expects that his own acts, and the acts of those about him will stand unimpeached, what must be the impression made with all this strength of evidence? It is to be said (for that was the issue upon which it has been since put) that Mr. Marsden was a perfect idiot, utterly incapable of any thing but the most ordinary and trifling acts, and therefore as to them, those who knew him were aware that he had no intelligence—that he had not even the intelligence of a child. What is to become of these securities which I shall detail to you and shall prove? What is to become of the character, reputation, and honour of two hundred and thirty-seven persons? I admit that those parties who knew nothing at all of him may be free from reproach, but what is to be said of profes-

Digitized by Google

sional men who knew him and who witnessed his signature—bankers, and persons free from all reproach, dealing with Mr. Marsden as a person perfectly competent? Gentlemen, I have here a schedule of those deeds prepared, and it has been handed over to the other side more than once, the object of which is to present in one view the dates, the names of the parties, and the object of the instruments to which they were attesting witnesses. I have asked for it in order to state shortly to you (not in detail) some of the instruments, the general result of which I have been just stating. The first is a deed dated the 30th of January, 1782; it is a deed to declare the uses of a fine. Gentlemen, I believe it will turn out that Mr. Marsden acknowledged that fine in person. The earliest deed I have is that one of 1782, two years after Marsden had come into possession of his property. It is a deed which declares the uses of a fine by Mr. Marsden to the late Thomas Greene, of Gray's Inn. That was only two years after he came to the property. This was a deed executed by Thomas Greene, and it was I believe prepared by Mr. Greene himself; it was witnessed, amongst others, by two persons named Sarah Cookson and George Wright. The other witness was John Watkinson, clerk to Mr. Greene. That Mr. Greene was the father of the present member for Lancaster, a gentleman of the highest respectability and honour as an attorney practising in London; that he was personally known to Mr. Marsden and was intimate with him, you can have no doubt,—that will be to be proved by other sources and from Mr. Greene's own correspondence. Upon the former occasion we have not the evidence we now have—that Marsden with Greene went to the Common Pleas and acknowledged that fine in London. That Mr. Greene was a man of intelligence and had the means of knowing the circumstances and the situation of Marsden, there can be no doubt. You could not suppose that Mr. Greene would have permitted Mr. Marsden to have been a party to all this if he had thought Marsden was incapable. I believe his lordship knows that the law of fines is that they are not only acknowledged in person, but there must be an express affidavit of the competency of the party. An individual doing that in a court of justice is giving the highest sanction for his honour, integrity, and personal intelligence that can be given. Mr. Greene is dead, and by far the greater number of those concerned (as might be expected) are now gone to their long homes, and if I am to be permitted to ascribe their acts with Marsden, and towards Marsden, in support of the deeds to which they were parties, I know not upon what any man could rest with confidence. If we show that in the sight and face of the country where he lived he did every act and deed of every sort—that he bought and sold bits of property at various different dates—signed bonds, and executed deeds, every one of which have remained unchallenged till he were cold in his grave; if it appear

Digitized by Google

Digitized by Google

Digitized by Google

that he did all these acts, not in a corner, not under the sanction of persons of no reputation, not seeking out amongst the agents of the profession any one who might be supposed to be ready for the sake of profit, or to attend to their own emoluments even to the sacrifice of honour; if it will turn out that every attorney employed in these transactions was of the highest professional reputation and station in life, some of whom were residents in this town of Lancaster, and one after another employed by Mr. Marsden.

The next deed I shall notice was executed by Mr. Marsden on the 22nd of September, 1783: that was the counterpart of a lease of some property in the Strand, London, granted by Marsden to Mr. Thomas Lambert, of the parish of St. Martin. It was prepared by Mr. Greene, and it is attested by H. Cowperthwaite, clerk to Mr. Greene of Gray's Inn, and James Lambert. The next deed executed by Mr. Marsden was a contract for the sale of some property on the 17th of January, 1788, to William Edmondson, of Skelda, in the county of York, yeoman. That was probably sold to pay part of the purchase money of Hornby Castle. The amount of it is £2,450. It was prepared by Mr. James Barrow, attested by him, a gentleman who was, I may say, of as high character in the profession of the law as any man who ever lived. He was perfectly well known to many of this town, where he had lived for many years; he afterwards went into partnership with Mr. Baldwin, under the firm of Barrow and Baldwin. That firm was afterwards Baldwin and Dowbiggin—subsequently Dowbiggin and Sharp, the latter of whom is the gentleman who instructs me upon this occasion. The next deed executed by Marsden is dated the 26th of April, 1788; that is a mortgage for £10,000 to John Anderson and Alexander Anderson, of Philpot lane, London, merchants. It was prepared in London, those Messrs. Anderson being clients of Mr. Bleasdale, the attorney, in London, a gentleman who was connected with this county. I believe he had been at the same school with Marsden, and he spent the early part of his life here, and at an advanced age came to settle in this part of the country. He it was that prepared the will in question, the attesting witnesses to that mortgage were James Barrow and George Wright.

The next deed to which I call your attention is a conveyance of Gisburn Hall, by Mr. Marsden to Thomas Lister, Esq., afterwards Lord Ribblesdale, the consideration is £1130; it is dated 22d April, 1788, and attested by Sarah Cookson, George Wright, James Barrow, Thomas Starkie, and David Kaye. That property is near to Gargrave, where the present Mr. Lister now lives by the name of Marsden, but by way of distinction from the deceased John Marsden, whom I shall have occasion most frequently to mention, I shall call him Mr. Lister Marsden. There was an acquaintance between the late Mr. Marsden and the family of

Digitized by Google

Lord Ribblesdale; they were second cousins, (or something like that), but it is not likely that Lord Ribblesdale would have purchased Gisburn Hall for £1130, of Marsden, unless Marsden had been deemed perfectly competent to convey it.

The next deed is a contract for sale by Marsden to Josias Remington, of Scorthrope, in the county of York, gentleman; the consideration is £2500; it is dated 26th July, 1788, and it is attested by John Peart. That contract, though made, does not appear to have been acted upon; it was rescinded, and the estate sold to some other person. The next deed was from Mr. Marsden to George Mashiter; it was also a contract of sale, the consideration being £850, dated 4th November, 1788, prepared by James Barrow, and witnessed by that same gentleman. There is next a mortgage executed by Mr. Marsden for £27,000, to John Lefevre, Esq., of Heckfield, in the county of Southampton, dated 3rd July, 1789. That was prepared in London, and attested by Stevens Felton, and James Barrow. Whether this Mr. John Lefevre was personally known to Mr. Marsden or not, I do not know. I am not able to give any other evidence than that there was some correspondence between these parties, in which I admit that they called each other "sir" in a formal way. It is believed to have been prepared by Mr. Greene, whose name has been already mentioned, and whose character, if not sufficiently pledged by what I have already stated, is here well pledged by his permitting that gentleman as his client to advance £27,000, which was the sum then given. The next deed was a counterpart of feoffment of certain premises in Botton, executed by Mr. Marsden to Christopher Bland, a merchant in this town, who purchased the same property belonging to Mr. Marsden in Botton; that is dated the 13th February, 1790, and is attested by George Wright and John Baldwin. Then there was a mortgage for £8,000, executed by Mr. Marsden and others to the Right Honourable Sir John Eardley Wilmot, dated 25th May, 1790, prepared in London, and attested by Henry Silverlock and James Barrow. Sir John Eardley Wilmot appears to have been a client of Mr. Bleasdale. On the day following we have the appointment of a receiver between the same parties, prepared and attested in the seme manner as the former. In the same year, on the 22nd of December, there was a contract for sale executed by Mr. Marsden to Richard Mansergh, of Whittington, near Hornby, yeoman, for the consideration of £1,200. That deed was prepared by Messrs. Atkinson and Watkinson, solicitors in this town, and attested by Mr. George Wright; and the other attesting witness, oddly enough, was Reginald Remington, who, forgetting that he was so far a party to such transaction, appeared as a witness on the other side at York.

We have next a deed of bargain and sale for suffering a recovery; it was executed by Mr. Marsden and Lefevre to Mr.

Digitized by Google

Digitized by Google

Digitized by Google

Wright, on the 6th of August, 1791. It was prepared in London, and attested by Sarah Cookson and James Barrow. There is next a lease of the Hall Barns estate, dated the 23rd of January, 1792, by Mr. Marsden to William Robinson, of Melling, a farmer. That was prepared by Mr. Baldwin, who succeeded Mr. Barrow, and attested by George Wright and Thomas Guy. The next is an agreement for a lease of tithes by Mr. Marsden to Reginald Remington, dated 25th August, 1792, prepared by Barrow and Baldwin, and attested by George Wright. We have then a contract for sale of the manor of Allerton-cum-Wilsden for the consideration of £2,400; that is dated the 5th of November, 1794, and is executed by Mr. Marsden to Benjamin Farrand, of St. Ives, in the county of York, and it is attested by William Holden and George Wright. That Benjamin Farrand was a gentleman of the county of York, well known by the name of Major Farrand. I do not know, gentlemen, if he were known to any of you, but I believe I could refer to letters passing between him and Mr. Marsden, showing his knowledge of him, and this I may say, that those who knew any thing of Major Farrand's character will at least agree with me in saying, that the expression "unsullied honour" never attached to any name with more force and propriety than it did to his. He corresponded with him, and he must therefore have had some personal knowledge of him,—you cannot doubt that.

Gentlemen, then we have a lease of Camp House estate, executed by Mr. Marsden to George Matson of Camp House, dated the 6th of June, 1795, where it was prepared we do not know, but it is attested by George Wright. The next deed executed by Mr. Marsden was a lease of Hornby Park and Hornby Holmes to Messrs. Leonard, John, and Thomas Willan, dated 8th February 1796, and attested by George Wright. Then there is what is called an exchange deed between Mr. Marsden and John Marshall of Wray, Esq. dated 13th February 1797, prepared by Dowbiggin, and attested by George Wright and Ralph Butler, clerk to Dowbiggin. The next deed is a mortgage for £2000, by Mr. Marsden to John Fryer of Cuerden, near Preston, gent., dated 13th June 1800, prepared by Messrs. Pilkington, and attested by John Dowbiggin and John Pilkington. We have next a mortgage for £2000, by Mr. Marsden to John Yeats, Esq. dated 13th August, 1800, attested by Dowbiggin and Wright. There is also a further mortgage for £1000, passing between the same parties, dated the 14th February 1800, and attested by Baldwin and Wright. I may observe that the gentleman of the name of Yeats, who lends the money, was uncle to Mr. Bell, the King's counsel, Mr. Bell having actually been at school with Marsden, I believe at Kirkby Lonsdale. There Mr. Bell was at school with the very man whose competency is called in question. Mr. Bell's capacity, to judge of him even at the earliest age, cannot be

Digitized by Google

doubted; and he appears to have had a distinct recollection of Marsden's competency to execute a deed when he comes to the years of majority, as there is amongst these deeds one executed by Marsden in his favour, which I shall presently notice. If any man were capable of judging of another's acts, and whether they might display competency, I should say that Mr. Bell may be considered as that man. The next deed in point of date is a grant of tithes of certain lands situated in Hornby, by Marsden to William Carter, of this town, merchant, dated 13th February, 1802, prepared by Mr. Dowbiggin, and attested by George Wright and Benjamin Robinson. The next is the one I have just now alluded to, namely, an assignment of a mortgage for £7000, executed by Mr. Marsden and others to John Bell of Lincoln's Inn, Esq. dated the 12th of February 1803, prepared in London, and attested by John Dowbiggin. This is a deed executed in favour of Mr. John Bell himself, who was not very likely to lend his money upon insufficient security, and it will turn out that he had ample means in 1803 of being convinced of Marsden's competency having known him from a boy. Besides that, we have another deed in favour of the same gentleman. It is a deed of covenant, by Marsden and others, to John Bell, Esq. of the same date, prepared in London, and attested by John Dowbiggin. The next deed I shall notice is a mortgage of £2000, by Mr. Marsden to James Lodge and Miss Pedder, both of this town, dated 14th February 1806, prepared by Dowbiggin and Sharp. We have then a further mortgage of £2000, by Mr. Marsden to John Yeats, Esq. dated 12th July 1808, also prepared by Dowbiggin and Sharp, and attested by George Wright and William Sharp. Among these names I find that of Mr. Sharp now frequently occurring, he is a gentleman well known as an attorney of this town, and I may notice him, as this is almost the first time his name has been introduced in the enumeration of these deeds. Of Mr. Sharp I need say nothing, but merely appeal to any one of this town, or any one of this country, for his character. I have no doubt I should be answered that it was certainly that of honour and integrity, and perhaps I could not appeal to a better authority than my learned friend Sir James Scarlett, or to my professional brethren now in Court.

The next deed is of the same date; it is a mortgage for £5000, by Marsden to Mr. Wildman, prepared and attested as the former. There is also a deed of covenant, of the same date, between the same parties, and prepared and attested as the preceding one.

Gentlemen, in this enumeration of the deeds executed by Mr. Marsden, we next come to a lease of tithes granted by him to the Rev. John Tatham, dated the 26th of January 1808, prepared by Dowbiggin, and attested by William Sharp alone. We have next a mortgage for £10,000, by Mr. Marsden to the Rev. Edward Balme, of Russel-place, Fitzroy-square, London, dated 12th

Digitized by Google

Digitized by Google

Digitized by Google

May 1809, prepared in London, and attested by William Atkinson and George Wright. Then there is a further mortgage for £6000, by Mr. Marsden to John Yeats, Esq. dated 13th Feb. 1813, attested by Dowbiggin and Sharp. The next is a deed of exchange between Mr. Marsden and John Atkinson, and William Atkinson of Wennington Bridge-end, yeomen, dated the 15th of Dec. 1813, prepared by Mr. Bleasdale, and attested by George Wright and Giles Bleasdale. There is another mortgage for £8000, by Mr. Marsden to the Rev. Mr. Driffield of King's College, Cambridge, dated 2nd August 1815, prepared in London and attested by Wright and Bleasdale. The next is a lease of right of road by Mr. Marsden to Sanderson's devisees, dated 13th May 1819, prepared by Dowbiggin and Sharp, and attested by the latter. We have then a transfer of mortgage for £10,000., by Mr. Marsden to Richard Yorke, Esq. dated 14th February, 1825, attested by George Wright and William Robinson. That gentleman, Mr. Richard Yorke, was high sheriff of the county of York a year or two ago. I believe he married the sister of Lister Marsden, so that he had the best means of knowing the degree of security and the circumstances under which he should advance that money upon mortgage to the extent of £10,000, which large amount I should suppose would not be worth one half of its original value if Admiral Tatham can say " that is my estate, as Mr. Marsden had no power neither to will it away nor to charge it by mortgaging it for such large amounts." We have then a transfer of mortgage for £5,000 between the same parties, and of the same date, and attested as the preceding one. It is clear, gentlemen, that Mr. Yorke must have had personal means of knowing John Marsden and his relations, as Mr. Marsden spent some portion of his time at Hornby Castle.

Gentlemen, these are the deeds that have been executed by Marsden. All of these were transactions recognized by the individuals therein respectively named, and to whom I have shortly alluded. I now pass to the deeds that have been executed to Mr. Marsden. I know it has been said that there is a wide difference between the one class of deeds and the other. Gentlemen, I think there can be none. I am not so much putting these transactions upon the inferior consideration of interest (although I know it ought not to be shut out of the consideration of the question), but I put it upon the ground of the personal honour and integrity of the parties. I say that whether a man were more or less in peril for an instant is not the true consideration of this case. We have here Mr. Yorke trusting Mr. Marsden to the amount of £15,000 upon an estate it is said Marsden had no power to charge if he were of an incompetent disposing mind. Mr. Yorke, therefore, was in greater peril than even if they had conveyed away the land and got the money. It may be said that the parties were safe, for there was the interest at all times to be

Digitized by Google

had; but, I put it upon a higher ground than that, which is this, namely, that no man of honour and integrity through life, would ever have been a party to the transactions of such an individual as you will find Mr. Marsden is by and bye to be described to have been. Now, Gentlemen, I do not propose to detail those deeds executed to Marsden with the same minuteness, or at the same length as I have done those executed by him. Suffice it to observe that there are not fewer than about 80 of these deeds in all, that is to say, those executed by, and those executed to Marsden. They were all of them transactions with persons of great respectability, and are attested by all sorts of persons who were known and considered respectable, such as clergymen, attornies, and gentlemen of fortune residing in the immediate neighbourhood. There may have been amongst them some few strangers; but, still, it is certain, these were all transactions entered into and executed in the open face of day—no concealment was in view, nor attempted, but every thing was done so as to be publicly known in the county—and while Mr. Marsden lived, it is clear no man ventured to say that he was not competent to execute those deeds.

Then, gentlemen, I come to the bonds executed by Mr. Marsden, and which bonds I shall more particularly allude to. Here, again the argument rather improves upon me as far as interest is concerned, because if you lend a man money—if he be incapable of giving security, and if you cannot extricate him from that incapability what remedy have you? You have not a remedy upon his bond as he cannot execute one, for I take it that a man who cannot make a will cannot give a bond. I will now proceed to enumerate the bonds granted by Marsden in the same manner as I enumerated the deeds executed by him. Here is a bond for £200, dated the 2nd of August, 1781, by Marsden and Mrs. Cookson to James Barrow of Lancaster, Esq. That was Mr. Barrow an attorney in this town, a gentleman not very likely to allow £200 of his money to be advanced if he distrusted the individual to whom it was given. That deed is witnessed by George Wright and by George Fletcher. The next is a bond for £100, dated 14th of February, 1781, by Marsden to William Fisher, Miles Housman, and Peter Hartley, all of this town, attested by Mary Cookson and George Wright. The next is a bond for £500, dated 16th of March, 1781, by John Marsden and Mrs. Cookson to John Nicholson of Warton, Schoolmaster—attested by George Wright and George Fletcher. Then we have a bond for £200, dated 12th of May, 1781, by Mr. Marsden to George Wright—attested by Sarah Cookson and George Bently. Then a bond for £200, dated 12th of February, 1782, by Mr. Marsden to John Smith of Forton, attested by Sarah Cookson and George Wright. Another dated 13th of February, 1782, to Richard Simpson of Lancaster, and attested in a similar manner. Then

Digitized by Google

Digitized by Google

Digitized by Google

we have a bond for £300, dated 21st of January, 1783, by Mr. Marsden to John Shaw, of this town, merchant, attested by George Wright. This gentleman, John Shaw, from his vicinity to the granter of the bond, was very likely to know by enquiry what was the actual state of his mind at the time of granting it. Another for £200, dated 17th of October, 1783, by Mr. Marsden to Thomas Jackson and John Stables, of this town, mariners, attested by Sarah Cookson and George Fletcher. Another for £400, dated 13th of February, 1783, by Marsden to George Postlethwaite, of this town, attorney, attested by Sarah Cookson and George Wright. Another for £100, dated 12th of February, 1786, by Mr. Marsden to John Davis, of Skerton, mariner, attested by Sarah Cookson and George Wright. Another for £600, dated 12th of February, 1784, to Bateman, of Moss-side, attested as the one of the preceding day. Another for £500, dated 1st of March, 1785, by Mr. Marsden to Christopher Bland, of this town, cooper, attested by George Wright and George Fletcher. Here is another for £300, dated 25th of February, 1795, by Mr. Marsden to William Barrow, of Lancaster, surgeon. That gentleman was the father of the three gentlemen I have frequently mentioned—the one, James Barrow, as being a solicitor here—Thomas we knew at the bar, altho' not an eminent lawyer; yet no one will deny him the praise of having been a sensible and an honest man—the other was George Barrow, who was also well known in this county. That deed is attested by George Wright.

Gentlemen, Mr. Marsden next executed a bond for £1,400, dated 12th of February, 1785, to Mr. Bateman of Middleshaw, in Old Hutton: that is attested by George Wright and William Carr. Another for £200, dated 12th of September, 1786, by Mr. Marsden, Mr. Wright, and Mrs. Cookson, to Samuel Lister, of Manningham, near Bradford, gentleman, attested by Elizabeth Tatham and John Bently. Another for £380, dated 22nd of April, 1786, by Marsden and others, to Sidney Clayton, of Manningham, widow—the witnesses, Elizabeth Tatham and Sarah Cookson. Another for £400, dated 23rd of October, 1787, Mr. Marsden and Mr. Wright to Ann Tindall, of this town and others—witness, Thomas Edleston. Another for £600, dated 16th of December, 1785; Mr. Marsden and others to William Pollard, of Bradford, gentleman, attested by John Bently. The next bond executed by Marsden, was for £3,000, dated 3rd July, 1789, to Robert Dent and John Keysall, of Temple Bar, London, Esqrs., attested by Thomas Greene and George Wright. Gentlemen, you will ask, who was Robert Dent? He was a member of the firm of Child & Co. near Temple Bar, London. That Robert Dent was the father of the member of parliament for Lancaster, I mention that for this reason—it is quite plain that Mr. Dent had the means of making enquiries in this neigh-

Digitized by Google

bourhood, and it was not likely that that respectable banking house would have lent £3,000 upon the bond of a person who we are to be told was notoriously an idiot, or a connate fool who was not capable of distinguishing right from wrong, and morally irresponsible and incapable to contract or give a bond for £3,000. The next bond granted was for £2,000, dated the 8th December, 1789, granted by Marsden and Mrs. Cookson, to Dr. Clayton of Kirkham, near Preston, attested by John Baldwin and George Wright. Another for £500, dated 2nd of April, 1794, Mr. Marsden to Mr. John Dowbiggin, of Lancaster, attorney, attested by George Wright. Another for £300, dated 13th of May, 1803, by Marsden to John Downham, of Botton, near Hornby, yeoman—witness, John Dowbiggin. Besides these, there are other bonds for various amounts, such as £6,000, £200, £1,600, £2,000, £200, £300, and £400.

Gentlemen, I will not tire you by going through the whole of those bonds with the same minuteness, in respect of the larger portion of them; but I may here mention as the result, that these bonds amount to the large sum of £22,280. The witnesses to the whole of these deeds and bonds were no less than two hundred and forty-five, of whom those who were parties to some of them; there were not fewer than fifty-five, who were living either at Hornby, or within five miles of Hornby Castle; forty-two lived at Lancaster, and many others had spent part of their time in the immediate neighbourhood of Hornby or Lancaster. Of the whole number of the parties to the deeds, there are not more than thirty who had not the means of knowing Marsden; and, of course, all the others knew perfectly well with whom they were dealing. The same remark applies to the witnesses to the bonds, and of those not fewer than three-fourths personally knew the individual whose act and deed they were attesting. I think I need hardly say, that as far as they can have been presumed to know the man, they expressed their conviction, that he was a fit person to put his name to such instruments, and unless it be to be said, that a man may by himself sell, and charge, and discharge himself in money transactions, may borrow money, pay off debts, and might do every thing but make a will, I know not in what manner my friend is to present any answer to that case. Above all persons, who is more especially bound by these acts, continuing from 1782 to 1824 or 1825, is Admiral Tatham. I may ask, of all persons whatever, what right has Admiral Tatham to complain, who comes not here to ask for the inheritance of his ancestors; who comes here not to say "give me Wennington Hall which belonged to our elder brother, give me that which he inherited from our father, this man not possessing a sound disposing mind to give it away"? No, he has no right to do this, but nevertheless he comes here to say, "I have allowed you to act for no less than sixty-eight years to improve this estate, amounting now in value to upwards of

Digitized by Google

Digitized by Google

Digitized by Google

£6000 a-year, and I come to say all this is mine, as you were utterly incapable of doing any thing." I say, as against Admiral Tatham, this is to be disputed. Whoever else might come and claim this property, he of all others is not the man. Is it to be borne, that a near relation having a brother living in the very house, and a cousin living much longer there than that brother of the plaintiff, that he, the plaintiff, is to say this in the face of all persons capable of giving him the best information, persons with whom he was in communication continually; is he to permit all this to go on so long, and then at this time he means to turn out Richard Yorke as mortgagee, and to leave him to get his £15,000 where he may? Why did he not in Marsden's lifetime come forward and boldly state that individual's incapacity as he now does, or by taking out a commission; if he were aware of all these things, why did he not proceed upon an inquisition? No, he did not do that; because he was also aware that, if he dragged Mr. Marsden before a jury, there would have remained upon his examination no doubt that he was perfectly competent. Why did Admiral Tatham allow the grave to close upon him before he ventured to institute such an enquiry? I say this is decisive of the cause. I say no person who meant to have acted fairly would have permitted Mr. Marsden thus to deal with others, or others with him, for a period of no less than fifty years odd. During the greatest part of that time, matters stood in a different situation; he, the plaintiff, having his own relations, his brother, his aunt, his cousin, and various other persons, able to give him the best information of what was passing in the interior of the castle, and fully able to support the charge of incapacity, if it could have been supported with truth; but for that man to let fifty years go by, and, when all these parties are gone down to their long account, and even when many of the persons who were witnesses to these deeds are sleeping in their graves, and when Mr. Marsden can no longer be examined by a jury, can welcome this frightful enquiry, this new sort of *inquisitio post mortem*, to make a man an idiot and a fool after sixty-eight years of his life have passed away! It may be at least said that, during fifty years of that life, he was in that enjoyment of faculties and capacity far beyond that which the generality of mankind can be shewn to have possessed. As against Admiral Tatham, therefore, it may be said, that this fearful enquiry ought never to have been raised against his cousin Marsden. He, the plaintiff, of all persons, even those in blood, or the heir to an estate, can have no right to do this after permitting his relative to deal with all the world for fifty years. Oh, gentlemen, when I first heard of that circumstance, it made that impression upon me which I cannot possibly forget! Admiral Tatham was watching in the neighbourhood, and Marsden was not cold in the sheets whereon he died, when Admiral Tatham sent in a caveat to stop the probate of his will! Why did he not adopt some of those measures which he

Digitized by Google

seems to have had in his contemplation during the existence of that individual? Why were those transactions delayed, and nothing done? Why did he not do something of that same sort when Mr. Marsden was in the vigour of life; for, to the last, Marsden could have removed all doubts upon the subject? But no such enquiry was instituted; he delays to the latest period, when at length a paralytic attack closed for ever those faculties by which he might have more fully disclosed all the facts and circumstances which passed when the parties to all these instruments were alive. Had a jury been assembled to enquire as to how he conducted his affairs, when he thought fit to buy and sell, and to do every thing that a man of ordinary capacity could manage, I assert, with confidence, that Marsden's presence could have repelled that inference which is now attempted to be raised. But, no, nothing would satisfy Admiral Tatham, but, after having permitted that time to transpire, his coming forward and saying, "the mortgages that have been granted are all void—I care not for them—let who will suffer, I am the heir-at-law—I claim the estate at Marsden's death, although I never challenged his capacity during his lifetime." But, gentlemen, although that is by far the most important part of the case I have to submit to you, I am by no means certain of its being conclusive and unanswerable; all that I say is, that I think it is a case now depending upon matter of testimony, which testimony I am now about to lay before you.

Gentlemen, I am now about to call your attention to certain documents that were found at the death of Mr. Marsden. He was a man certainly of extremely retired habits, shy and distant in his manners. I acknowledge at once that he was never high sheriff, and he never sat in the box in the capacity in which you are now sitting, neither as a special nor as a grand juryman—I admit that. I will shew you that his custom was to live in a particular room in Hornby Castle, where he was very little interrupted; he spent most of his time at Hornby; latterly he passed a week or two at Heysham with Mr. Wright, who was acting in the capacity of his steward for many years. He spent occasionally some months at Gargrave, and before that, was frequently at Belle Hill. Upon his death there was found in a cupboard in his room a collection of letters, scraps of papers, and a great number of variety of documents, and it is manifest from those that were so found, that many must have been lost—the earlier ones particularly—the latter part of the correspondence, which I must say is not so important as the other may be supposed to have been, is preserved.

Gentlemen, I now beg leave to call your attention to the letters found in his possession in the library where he used to sit, and I shall read such as I am entitled at this present moment to read, and no others, or such as are undisputed as to hand-writing. All these letters have been scheduled to the answer which was put in for Wright, to a bill filed in Chancery.

Digitized by Google

Digitized by Google

Digitized by Google

I make no complaint of that; it is fair that the heir, at whatever period he prefers his claim, should do so; he has a perfect right to file a bill for an investigation of the state of the party whose heir he claims to be. That bill was filed, and these letters were scheduled to the answer. I shall not read any letter that was not scheduled to that answer. I believe I am correct in stating that every letter, of which we had any knowledge, was so. It was only upon referring back to that schedule, that some further letters were discovered, which were not produced on the former trial at York, but which were produced here upon the trial in the Spring Assizes, twelve months ago. They are all, however, scheduled to the answer, and the reason why they were not all produced, upon that former occasion, was this—the papers were all removed, but, upon perusing them, I was astonished to observe the little consideration given at the outset to them. They were not, in point of fact, considered of very great importance; not more than four or five were actually used in the Court of Chancery, and as to the rest of them, they were laid aside as of no utility: it is an extraordinary incident in these proceedings, and personally I must—perhaps as an advocate might—have claimed some degree of reputation and credit for the mere accident of discovering them to be otherwise. I beg to be understood that I have no desire that they should be read a second time by the officer of the court; if so I would at the same time present to my learned friend, or to the attornies on the other side, copies of such of the letters I now read, and another copy to my lord.

GURNEY, B.—I have had copies of most of them ever since the last trial.

ATTORNEY-GENERAL.—Has your Lordship got a copy of the letters which passed between him and his cousin?

GURNEY, B.—Yes, I have.

ATTORNEY-GENERAL.—The first letter I present to you, gentlemen, is from Charles Tatham. As I propose to read them in classes, but not to read every one of them, I may here state that there is one entire class, which I shall merely describe, leaving that class to be read by the officer, and part of another class that I propose only to glance at, and read a few letters of. Those letters which I comprise in the first class—or what I may call miscellaneous letters—and yet there are not many more than one or two from each individual; and of some of the others it may not be important to read more than two or three of the letters out of fourteen or fifteen correspondents, and you will thereby judge whether these letters be the genuine effusions of the parties who wrote them, judging partly from the letters themselves, and partly from the circumstances under which they were written, and you will then perceive what was the conduct pursued by others towards Mr. Marsden. You will judge of the view which those persons took who had the best means of judging of his capacity and his competency, the nature of his feelings, and his general character,

Digitized by Google

as embraced in the answers to some of those letters, as far as they bear testimony to his conduct, character, disposition, and competency.

The first letter I shall bring under your notice is dated Alexandria, 12th October, 1784; it is from Charles Tatham to John Marsden. Mr. Marsden had been then four years in possession of his estate. Charles Tatham, I believe, was the younger brother of the admiral. The family consisted of four brothers. The admiral was not the eldest; I believe he was the third. The eldest was with him; the second was Henry, who was the inmate of Mr. Marsden's own family; the third was the admiral; and the fourth was Charles, whose letter I am now going to read. When I proceed upon this part of the case, I need not make an apology to you for the time that must be occupied in reading them to you; but they are really the whole case, for you will have to judge from the whole circumstances and facts detailed in the letters passing between him and others during his long life. He was then in his twenty-second year. That letter begins thus:—

"My Dear Cousin,—You Should have been the first person in the world I would have wrote too had nt. my time been Imployd by affairs that called for my more imeadeate atention in the first place I am calld upon by my Buseness it being the first consideration must by no means be neglected. As for my Brother"

I assume that was Harry,—

" his goodness is Such that I know he will Excuse me till I am more disengaged was I to write to him in my present Embarased situation I perhaps might only do Justice to my own feelings & he might construe it deceit (so different an oppinion have I of him to Mankind in Genl. who above all things are fond of Flattery. I shall now proceed to give you a small Idea of what has passd. since my Departiure from Whitehaven as I supose Harry long ere now has told you the rest."

From which I infer there must have been some correspondence besides this. Then he goes on to say—

" We Saild the 14th. July & had Good Weather the Chief of the Way but as you know nothing of Sea fareing matters it is not worth While to Dwell upon the Subject. We Reachd. the Cape of Verginia the 13th Septr. but did not get heare till the begining of the present Month so we were about twenty Days in coming 350 Miles. When I arivd. I was no little consirned to find the Town in a Most Shocking Condition the People Dieing from 5 to 10 per day & scarsely a Single House in Town cleare of Descease which proves to be the Putrid Fevour—I am going to Philadilphia in a few days if God Spares my Life and permits me my Health & their I intend to stay till Affairs here bare a more friendly Aspect & so the Next time you here from me will be I expect from that Place tho' Youl Please to Direct to me heare as Usual. God Bless You my Dear Cousin and may You still be Blessd with health which is one of the greatest Blessings we require hear is the sinseare wish of Dr Cosn. Your

Affect. Kinsman &
verry Humble Servt.
CHA. TATHAM."

Then there is this Postscript—

" P. S. Pray give my kind Love to my Aunt My Brother & My Cousin Betty allso my Complements to all the rest of the Family and all others my former Aquintances, &c.
Alexandria, 12th Octr. 1784.
Addressed to John Marsden, Esquire, Wennington Hall, Lancaster."

Digitized by Google

Digitized by Google

Digitized by Google

This letter is not remarkably well spelt, these are what may be called family defects, which by and bye my learned friend may say occurs in Marsden's correspondence. For instance, he spells there "their," here "hear," sincere "sinseare," disease "discease," and business somewhat strangely; but the question is this, is not this the genuine effusion of one intelligent and kind relation to another, whom he was treating as an intelligent and kind cousin? At this time Henry Tatham was living in the house; Mrs. Cookson, his own aunt, was living there; and, if you believe the evidence they gave before, you are to collect from this that Mr. Marsden was at this time like one scarcely having the feelings of a lower animal; was utterly destitute of sense of every kind; and, according to the language of medical men, "a born idiot," or one who had no capacity whatever to comprehend his station in life, his duty to others, and his duty to those around him; but a more natural letter than this, which we got from Admiral Tatham's own brother, I could hardly present to your attention.

Now, gentlemen, I have Mr. Marsden's own hand writing, the copy of a letter dated June 1st, 1787, apparently written to that same Charles Tatham; it is not perfect; of course this is not exactly what we want; this is a copy; and you will find that in nineteen instances out of twenty letters he appears to have kept a copy, and to have thrown it by; so that very often you have the copy and the original together; although in other instances the original of the letter is destroyed. Then we are at a loss to know what letter is lost. This is written in the same year, and afterwards we find no original of other letters received, although it is plain from the context that others must have been received. In that letter he says—

"Dear Cousin.—I received your Letter some time ago wherein you mentioned that you had sent me a map of the United States of America to the care of Mr. George Welsh merchant in Liverpool. I deferred writing till such times as I had made enquiry after it but did not get the map till the 7th instant—

You mentioned in your Letter that you had sent me a small quantity of dried fruit—I received nothing but the map for which I am obliged to you. My aunt has had very poor health since you left England she has scarce ever been well, I am in hopes she is getting better again, I think that change of air and a journey would be of service to her—We have lately had an account of poor Mrs. Smith's death, she died at St. Albans the 7th. instant. My aunt has had a letter from your Brother Harry he is very well. It is reported that your acquaintance Mr. John Bradshaw is going to be married to a Miss Fell of Lancaster,"

That turns out to be right as Mr. Bradshaw will be a witness, and will tell whether time has rendered the fact to be true. Then he says—

" whether there is any truth in it or not I cannot tell. I suppose you have re-received my last Letter wherein you will see an account of your Nurses death I have nothing further to add but compliments from my Aunt and your Cousin Betty

Wennington Hall
June 1 1787
C Tatham Esq.

I am Dear Cousin your
Affectionate Kinsman
J MARSDEN"

Digitized by Google

I cannot pass by the account of the nurse's death without mentioning that, although in some instances, not very applicable, where he had been affected on being applied to, he was guilty of disrespect to his mother, whom he would not go to see, and he had kept up but little intercourse with her, as he does appear to have supposed she had neglected his education. He was, however, hospitable and kind to others, and attentive to servants and nurses; attached to old people and to his god-children, he having had no children of his own, and might be supposed to take such an interest in children as created that attention. You will find he evinced extreme affection to every body about him, taking every opportunity of enquiring as to every member of the family,—in short, showing, that he sent his kind remembrances to them, and showing a willing heart and mind to benefit them, and had leisure enough to indulge in those feelings, in showing attention to every one around him.

Gentlemen, the next letter I shall present is one dated the 28th of March, 1784, dated Lancaster; and I believe this is quite new. I will, therefore, hand to my friend a copy of that letter and another to his lordship. This is a letter from Mr. Postlethwaite, who was an attorney, and formerly had been steward before Mr. Wright.

Sir J. SCARLETT.—Is there an answer to that letter?

ATTORNEY-GENERAL.—None; there is nothing to verify it except the fact of the hand-writing and the date. It is an application to Mr. Marsden to take an interest about some matters he was in the habit of taking an interest in. It is evidence of the way in which Mr. Postlethwaite treated him.

Sir J. SCARLETT.—There was a controversy as to whether the contents of letters not acknowledged should be read; but I am not aware that the judges passed any opinion upon that point.

GURNEY B.—No, the judges have not decided it, but there is such a difference of opinion amongst the judges upon the subject that it is my intention to receive them, subject to further consideration.

SIR J. SCARLETT.—I will not further object, but will merely request your lordship to take a note of the objection.

GURNEY B.—Certainly: it has been considered by the judges as far as I know to have been in favour of receiving such evidence, subject to objection.

ATTORNEY-GENERAL.—This is a letter from Mr. Postlethwaite, an attorney, in 1784, who had been steward to the estate before Mr. Wright became steward; he must have been in communication with all the members of the family, and must have known perfectly well the situation of Marsden, and accordingly he writes him this letter—

"DE SR,—Yesterday John Lowther and Francis Reynolds, Esqrs. were declared candidates to represent this Borough in the ensuing Parliament. They are neither of them yet come down, but Mr. Norton Lord Grantley's Son is here

Digitized by Google

Digitized by Google

Digitized by Google

to act for them; Mr. Lowther is indisposed, but intends being here as soon as his health will permit. We expect Mr. Reynolds to be here on Tuesday next, and this Day Sir James Lowther is expected here: As you have formerly been against the Quaker Interest I hope You will still oppose them, and all *Foxites*"

A great change has taken place in political sentiments of all sorts since 1784, and a great deal has been given up by people who are on one side to those on another, so that they stand together who never had been together before, and people who were separated are now associating with perfect good humour. One man is sent to parliament supporting a new and strange interest, and sometimes dividing with one party and sometimes with another. The circumstance of this man having an antipathy to Foxites I hope my learned friend, Sir James Scarlett, will not consider as a want of understanding, however he may back out as to the Foxites; but I should not like to signify it too loudly, although Mr. Marsden was, in 1784, what may be called a rank Tory. Forgive me, gentlemen, but don't visit upon the objects of his bounty his political sins; but so it is, that this letter says— " I hope you will still oppose them and all Foxites,"—

" and don't in the least doubt your joining your Vote and Interest with ours for the above Candidates and at same time they wod be much obliged to you for securing to them all such freemen as you may have in your Neighbourhood, I have just inclosed you a list of such as appear upon the Books to be in Wennington"

This was before they had gone to Hornby—

" wrote so far before church time."

I presume therefore it was Sunday, and Sir Andrew Agnew's bill did not then prevent canvassing a little upon a Sunday; this letter being written upon a Sunday. I have seen instances of it in Cockspur-street, on that day. Then he says—

" I now find Braddyll and Rawlinson are just come to Town and have called a Meeting of their friends at the King's Arms at 4 o'clock this Afternoon, therefore in all probability both sides will begin the Canvass to-morrow morning.

I have just now recd Mrs. Cookson's Letter, I have called on Miss Mc. Mellan She says She is so hurried with sending off Expresses &c. that She had not Time to look the Account through this Day but will let me have it to send by next Tuesdays Post.—I hope your relations the two Mr. Tathams will now be induced to take up their freedoms to support the Lowther and Reynolds Interest."

What he meant by the two Mr. Tathams I do not know; but it may come out in the course of the cause the one was William, the other was Sandford Tatham, the admiral; and I am not sure but it will turn out that it must have been the admiral. I know that Charles Tatham was at that time in America, and I believe William was there also.

" My Wife joins me in our kindest respects to you all & am
Sir Your mo: hble Servt.
Lancaster, 28th. Mar. 1784. GEO: POSTLETHWAITE
P. S. Please to take care of the enclosed list of Freemen & favour us with a return how they intend Voting.—
To John Marsden Esqe. at Wennington Hall"

Digitized by Google

Now this is an application to Mr. Marsden himself, and I should think it was written more than thirty years ago; its antiquity is distinctly proved by the date of the death of the man who wrote it. It is not like an ordinary letter, it is an application to him to take some interest in the election. In appealing to a man's prejudices, something under the name of principle proves most successful. And, therefore, he calls upon his relations, the Messrs. Tatham, to take up their freedom. It will be proved what Postlethwaite was. My friend's case, is as to the deeds, that it is all moonshine, and that Mr. Marsden knew nothing of what he was doing, and that somehow or another, that Wright got him to write letters, execute deeds, and sign papers, shewing his capacity and understanding, and Wright imposed upon the attornies of this town, and all other persons, whether they knew him or not. But, Gentlemen, here is a letter, and unless Postlethwaite was at that moment writing this letter, in order that I should read it to you this day, I know not how such a proposition can be maintained. I did not read this letter upon the first nor second trial, but unless it were written for the express purpose of imposing upon Marsden, some fifty years after it was written, does not this fact appear—that the act of a man who has gone to his great account, speaks more than fifty witnesses, who would say—"I have met Mr. Marsden, he is a shy man, he had no mind, he could not converse at all. I thought him a mere idiot." Is that the way Mr. Postlethwaite would write to such a man as they describe Marsden to have been? No, certainly not.

Now here is another letter to Marsden, in which the name of Mrs. Cookson occurs. I know what my friend will say as to this letter, but I rejoice to call your attention to it, to show that she knew of it. It says—

"Dear Sir,—Yesterday Mr. John Housman Agent to the Royal Exchange Insurance Office from fire called on me for the Year's premium for the Insurance of Wennington Hall &c. from Fire: But recollecting that on settling my last year's accounts Mrs. Cookson seemed rather inclinable not to insure any longer. And as I have not paid him you'l please to direct me whether you'l have the same continued or not my Wife joins me in our kindest respects to you and Mrs. Cookson. And am Sir

Yr. mt. hble Servt.

Lancaster, 12th. March 1784. GEO POSTLETHWAITE

(Addressed) John Marsden Esqe at Wennington Hall."

My friend will say Mrs. Cookson does every thing. But here Mr. Postlethwaite writes, not to her, but to Mr. Marsden. This letter is addressed to Marsden, couched in the most respectful manner, saying—"You'll please to direct me whether you'll have the same continued or not."

Gentlemen, the next letter which I shall submit to you, is from Mr. Oliver Marton to Marsden; he was the vicar of this town of Lancaster. That gentleman writes to him on the 20th of May,

Digitized by Google

Digitized by Google

Digitized by Google

1786, so that he perfectly well knew him at that time, and must have known his character, as people do not, in a county such as this, live so near to each other as Lancaster is to Wennington, without knowing what is going on. He says—

"DEAR SIR.—I beg that you will Order your Attorney to Wait on Mr. Atkinson, or Mr. Watkinson, & propose some Terms of Agreement between You and the Parish or Township or disagreeable things must unavoidably happen. I recommend that a Case should be settled by Your & their Attorneys, & laid before Councill to whose Opinion both Sides should submit otherwise it will be attended with much Trouble & Expence to both Parties. I am, Sr. with Compliments to Mrs. Coockson.

Your Humble Servant &c.
May ye. 20th, 1786. OLIVER MARTON.
I beg the favor of an Answer to this.
John Marsden, Esq. Wennington."

Now I have a letter or two here from an old friend of ours of the name of Barrow, who was a long time a member of the bar on this circuit.

In 1788 he writes to John Marsden thus—

GURNEY B.—Is it James or Thomas Barrow?

ATTORNEY-GENERAL.—It is Thomas, my lord. He says—

"MY DEAR SIR,—Having no opportunity of returng. your many singular favors heaped upon me—permit me to indulge a very ardent wish to shew you that I have great pleasure in remembering them—I have ordered a barrel of Oysters to be sent to you which will be left at Kew's at Lancaster addressed to you at Wennington, on *Monday or Tuesday next* which I hope will be received fresh—

With kind Compliments to Mrs. Cookson & Mr. Wright believe me to be
Dr. Sir
Yours very sincerely
T. BARROW
Innr. Temple 12th. Novr. 1788

N. B. The news of the present hour (4 o'Clock) is that the King is yet alive tho' very dangerous

To John Marsden, Esqr. Wennington Hall near Lancaster"

I believe that at that time the regency bill was about to be brought in, but was stopped in consequence of the king's recovery. Mr. Marsden, who was always a loyal man, would naturally like to hear of the state of the sovereign, and, consequently, it is to be presumed there is that postscript added to it.

Now here is a letter written by the same to the same, probably in the next year, 1795, as there is no date, in which he says—

"DEAR SIR.—I have long had it in contempln. to write you a Letter of thanks for the many civilities I experienced during my long stay at Hornby Castle it was my intention to have done it on my arrival in Town but Mr. Wright's Letter informed me that you was from home upon a visit.

He was then a visiter either at Gargrave or at Belle Hill. Then he says—

"I hope you will have enjoyed yourself on that excursion and that you avoid the bad effects of this very severe Winter you will see by the papers what havock it is making amongst us in the South we are dying like rotten sheep indeed I be-

Digitized by Google

lieve it is not in the recollection of the oldest Citizen of London that a more trying season ever happened but with all the Comforts and conveniences with which you so much abound it must be your own faults at Hornby if you suffer. Pray take the trouble of giving my best Compliments to our good friend Mr. Wright and tell him that I have been after Mr. Nooks the Gun Maker since the receipt of his Letter and that he informed me that his Gun was sent by the Waggon on the 10*th December* last with all things compleat accordg. to order directed to him at Hornby Castle as appears from their Book and the Porters Memorandum who delivered it.

I am sorry to inform you that my strong horse which I bought of Mr. Robinson after all the trouble and expence I have been at with him is going blind so that I must either make a Gigg horse of him or sell him for almost nothing to draw a post Chaise.

On the contrary I am glad to hear from Mr. Wright that is Kind care of the Butcher is likely to restore him to all his own famous powers."

Such things must be always a source of grief and joy to those concerned in them. He goes on to state—

"If he should come quite round I think I will make a riding horse of him and not draw him any more as his chest is too narrow. And if I should be able to make another excursion to the North next Hunting season he'll do to carry me a hunting—I have no news to communicate to you every thing seems to wear a gloomy aspect and I fear nothing is to be expected but bad news for some time to come

It was hinted to me that Croft was in Town for the purpose of adjusting his affairs but upon enquiry at Mr. Greens I find they have neither heard nor seen of him so that it must be a mistake

I remain Dr. Sir Yours truly

Mitre Court Buildings, No. 17. THOS. BARROW.

Temple, 13 Feb. 1795

To John Marsden Esqr Hornby Castle."

It will turn out that there was a correspondence between Marsden and Greene and Marsden and Croft as to this very subject, which you will better understand from the correspondence itself. But Barrow in this letter writes that there was a report that Croft had been in town.

The next letter is also from Thomas Barrow to Marsden, in which he says—

"Dear Sir,—I have just learnt that Mr. Ball leaves London to Night for Lancashire—and am glad that it affords me an Opportunity of keeping my Promise with you in sending the Music in Blue Beard—My Brother George has added two favourite new Pieces the Composition of a Friend of his which are highly Spoken of, and he begs your Acceptance of them—If there is any other piece of music that you would wish to have, I beg you will let me know—I have also met with a very intelligent Sheet of the New Platoon & Manual Exercises which will enable you to become compleat Master of them so that when we meet again I shall hope to find you quite a Proficient—Notwithstanding the Winter we meet once a Week in the Temple Garden"

Gentlemen, perhaps, you may have heard that during the late war there was a corps of volunteers that met in Temple Gardens, and you may also have heard that there was a corps called the "*Queen's Own*," and another called the "*King's Own*," but this

Digitized by Google

Digitized by Google

Digitized by Google

one was called the "*Devil's Own.*" I believe that was the name it went by. Then he says—

"I beg you will remember me in the kindest way to Mr. & Mrs. Wright and Miss Tatham and I hope they are all well.

Mr. Wright will have been already informed that *Park* is in Town and pray tell him I have reason to believe intending no *Good to you.* I have heard that Major Marton either is come or is on the Road to Town to give him the Meeting on the Subject of the Hornby Inclosure act.—A Word to the wise is enough."

I do not mean to put too much stress on this,—but when you consider the person to whom he writes, you will perceive how it was applied—He concludes by saying—

"I wish you would let nobody else see this Letter *but Mr. Wright*
There's at present no news in Town worth relating
I remain with the greatest
esteem Dr. Sir your sincere friend
Temple 18 Nov. 1798. THO. BARROW

P. S.—I thought a Barrel of Oysters would carry well at this Season of the year by the Coach and have directed one to you *by this days coach* which you will oblige me by accepting—They are an excellent kind if they do not spoil on the road.

John Marsden, Esqr.
Hornby Castle, Lancaster."

The next is the last letter from Thomas Barrow to Marsden; it is without a date; but I shall read it as it is—

"DEAR SIR,—I am now with Mr. Bradshaw at Halton and we have proposed to hunt with you at Upper-Salters tomorrow morning for which Purpose the Bearer Mr. Bradshaw's Huntsman has Orders to bring his Hounds to your Kennel to Night to be ready to start early in the Morning Mr Bradshaw will be with you to Breakfast between Six and Seven tomorrow morning—Mr Robert Bradshaw will accompany me to Night.—Mr. Hall is not yet arrived
I remain Dr Sir Yrs very sincerely
Sunday Morning THO: BARROW.
(directed) John Marsden Esq
Hornby Castle."

Now, gentlemen, here is a letter from James Barrow to Marsden. I do not know whether this be new or not: it is from James Barrow, dated the 13th of November, 1789, (handing a copy to his lordship)—

GURNEY B.—I think it was produced before?

ATTORNEY-GENERAL.—Yes, my lord, I think it was. It has no year mentioned, but it must certainly have been in 1789. It is in these words—

"DEAR SIR,—I am desired to inform you that a Meeting is intended to be held tomorrow Morning at the Grapes at 11 o'Clock in Order to take into Consideration a Letter reced from Lord Lonsdale"

(Not the present lord, but his predecessor)

"when I presume an Ansr. will be thot proper to be given to it Shod. it be convenient for yourself & Mr. Wright to attend your Presence would give additional consequence and be much wished for as what is done ought to be with

Digitized by Google

the advice & Approbation of every Gentleman who has any Interest and especially of those whose Interest is great

Monday 30th Nov I am Dr. Sir with best Compts.
most respectfully yrs
JAS BARROW

To John Marsden Esq Wennington Hall."

Here is another letter from James Barrow, which may be called an electioneering letter, written in the same year and about the same time. It states—

"DEAR SIR,—A meeting of Friends is fixed to be held tomorrow morning at 11 o'clock when your presence is particularly wished for with that of Mr. Wright and any other Gentleman you may think proper It is meant to be a party meeting in order to consider what is proper for us as a Party to do preparatory to a Public Meeting which is intended within a few Days—Our friend Cawthorne means to be here early

I much wish also to see Mr. Wright about many things
I am D Sir very sincerely and respectfully yrs
JAS BARROW

(Addressed) John Marsden Esq."

I have now to read to you a letter from Charles Gibson, of Quernmore Park, who was formerly high sheriff of the county. He says—

"DEAR SIR,—Should you not have any hounds to assist you in your next weeks hunt, yours may probably harder run than you could wish—I therefore trust you will pardon the liberty I take in offering mine for a couple of days if they can be of any service, in which case you will be so obliging as to mention the time most convenient for me to send them—I could have wished you to have had them longer had I not been engaged to hunt for a Week at Garstang immediately after your hunt at Hornby, I propose myself the pleasure of spending a day with you, if an engagement sometime subsisting to go to Dallam Tower the last week in November does not take place and which is now doubtful.

I am Dr Sir Yours sincerely
Lancaster Novr. 18th. 1794 CHARLES GIBSON.
John Marsden, Esqr
Hornby Castle Lancashire"

That was about the year after Marsden had removed from Wennington Hall to Hornby Castle. I cannot help, gentlemen, here feeling that the character of a gentleman perfectly well known, is in some measure implicated in this letter. It cannot be (if Mr. Marsden were what he is represented to have been by Admiral Tatham), it cannot be but that Mr. Gibson knew his character. Mr. Wright must have had the extraordinary faculty of casting a spell over every body he came near. How came Mr. Gibson of Quernmore Park to compromise his honour as a gentleman, and his integrity as a man, by his writing to Marsden, who is by and by to be represented as an idiot, incapable of transacting any affairs in life? Mr. Gibson is dead; but his name, his character, his reputation yet live. And although unimportant as that letter may appear, relating certainly to nothing more than a friendly offer from one gentleman to assist another, in the field sports in which they both apparently took a general interest. It contains no other

Digitized by Google

Digitized by Google

Digitized by Google

matter except that he says—"I propose myself the pleasure of spending a day with you."

It has been suggested that inferior people would be called to bow to the shrine of wealth, and do that homage to Marsden and Wright that might make their testimony and acts scarcely credible. But how comes it that Mr. Gibson, a gentleman of such high character and respectability, should write to Marsden in this familiar style? I do not know, gentlemen, whether you have heard of him, but I cannot help being surprised how he could go to Hornby Castle to visit Marsden upon such familiar terms, if there be a syllable of truth in what is to be stated of the testator; or that I can reconcile with the character, honor, dignity, and integrity of that gentleman.

Gentlemen, there is a letter from Mr. William Richardson, in 1794, addressed to Marsden at Hornby Castle, which I shall next bring under your notice: it is one of the most natural applications in the world. It should seem that Miss Tatham was the only child or branch of the family; that her father or some other relation to whom she was heiress, had been appointed a trustee in regard to some property descended to her; that Lord Lonsdale had bought the property, and wishing to have a perfect title, was desirous that Miss Tatham should execute a deed, she being the nominal party, the legal estate being in her from her father, through the trustee having died without perfecting the title, or making a conveyance of the property.

This Mr. Richardson was an attorney at Kendal, and perfectly well knowing Marsden, writes to him thus:—

"Dear Sir,—John Fleming Esq. of Rayrigg a very valuable friend of mine lately contracted for Sale of a considerable property near Penrith to Lord Lonsdale.—On examining the title it appears that a fine was levied by the late Mr. Raincock and his Wife (who was Grandmother to Mr. Fleming and is lately dead) to the late Mr. Tatham of Askham as a friend and trustee for Mr. & Mrs. Raincock, and a deed executed declaring the trusts for such person as Mrs. Raincock should appoint Mr. Tatham died without having executed any Re-conveyance and Miss Tatham as his heir at law is a necessary tho' uninterested party to the Conveyance which on behalf of Mr. Fleming I have to request you will procure her to execute. Mr. Harrison will wait upon you with this and with the Conveyance which so far as relates to Miss Tatham you will see is mere matter of form. I am

Dr. Sir
Your very obdt. humble Servt.
WM. RICHARDSON.

Kendal 4th. March 1794.
Addressed to
John Marsden Esquire
Hornby Castle."

Mr. Richardson was a gentleman of respectability in his profession, as I understand he was likely to be, from his being employed as attorney between Lord Lonsdale and Miss Tatham. He does not write to any body else, but he writes at once to Mr. Marsden, and sends Harrison with the deed. He addresses

Digitized by Google

Marsden as any other gentleman would do another, known to be at the head of the family, desiring that some lady in the house should execute it: he addresses him with all due courtesy.

Then here is another letter from Richardson to Marsden, written in the same year as the former, in which he says—

"Dear Sir,—Mr. Fleming having lately sold a small Estate in Cumberland it appears that the legal Estate was in the late Mr. Tathatn in the same way as the Estate at Penrith and we are therefore under the necessity of again troubling Miss Tatham for her signature to the Conveyance which is prepared by the purchasers Attorney at Keswick and I have carefully perused and think it perfectly and proper for Miss Tatham to execute and my partner Mr. Fell waits upon her with it for that purpose I am

Dear Sir

Kendal, 28th. Novr. 1799. Your very obedient Servant

WM. RICHARDSON.

(directed)

John Marsden Esquire Hornby Castle

Gentlemen, the next letter I have to state to you, I must beg your particular attention to. From the circumstance to which it relates, and from the date upon the back of it, it must have been written on the 10th of April, 1797. And from whom do you think it comes ?—from no other than Admiral Tatham himself. It is not very important in its contents; but such as they are, they most perfectly prove, beyond all possibility of doubt, if there be faith in man, that the opinion that Admiral Tatham then had (that is in the year 1797) is not the opinion that he now ventures here to suggest to you through the medium of his counsel. Henry Tatham was just then dead, and admiral Tatham was near enough to come and meet the friends before the funeral, to take possession of his brother's effects, and to do that which became him as a brother.

He arrived at Hornby, as appears from the date on the back of the note, on the 10th of April, 1797. He says,—

"Captn. Tathams comps. to Mr. Marsden and he will request the favour of his attendance to meet Mr. Butler to examine the effects of his late brother Capt. Tatham being going to Bentham to settle the time for this purpose will thank Mr. Marsden to say what time will be most convenient to him or if Mr. Wright will do him the favour to call on him he will be glad to see him to arrange this Matter.

Hornby }
Monday Morning }

To John Marsden Esqr.
10th April 1797"

It appears that Henry Tatham was then dead. As to William Tatham, where he was I do not know. Did Mr. Wright persuade Captain Tatham to give this document? Did he get him to concur in what my friend is to say by and bye—was a general conspiracy of all mankind to make a man, who was incapable of anything, appear to be competent and fit to transact business? Admiral Tatham had been at no great distance when Henry Tatham died, and if we get anything like a correct account of

Digitized by Google

Digitized by Google

Digitized by Google

where Admiral Tatham has been at different times, we shall find that he never was long absent from the neighbourhood of Hornby —always accessible—not much at the place, but very much in the surrounding neighbourhood preparing for this day. It has been said, "that much of this has been prepared for this day, but that Admiral Tatham was not one of the parties engaged in such preparation; here, however, is admiral Tatham's letter, which speaks for itself. And whom does he ask to meet? He asks Marsden to meet him, and yet he is to-day to say by his counsel that he, Marsden, was a perfect idiot! We know that the largest part of the evidence which was produced is to be produced again, and that the object is now, as it was then, to show that Marsden was *non compos mentis;* and yet Admiral Tatham writes him that letter on the death of his brother!!

Now, gentlemen, I have here a statement in the hand-writing of Mr. Marsden himself. That note I read last was dated 10th April, 1797; I think it must have been after the funeral, for I believe that must have been about the 30th of March, and the note was on the 10th of April. There is a note of Mr. Marsden's of the 11th of April, having prefixed to it a cash statement, dated the 30th of March, in these words,—

"30th March 1797

	£		
By Cash recd. of Edmd. Butler Esqre. which he found in the late Henry Tatham's Desk	20	0	0
30th March 1797			
To Cash paid Mr. Gillow towards the funeral Expences of the late Henry Tatham	20	0	0
	—	—	—

Mr. Marsden's Compliments to Capt. Tatham has sent him the Account of money he received of Mr. Butler and how he has applyed it. He had no business with the late Mr. Tathams affairs, or took upon himself more than as a relation and friend who living the nearest to him at the time of his death to see every thing proper was done respecting his funeral. Having done that he sees no necessity for his attendance at Hornby to look over any papers. Captn. Tatham being present & the Revd. Mr. Butler being appointed on the behalf of William Tatham.

Should any delicacy arise respecting his Seal being upon the Boxes he has authorized Mr. Wright to take them off for him who is directed to deliver this to Captn. Tatham.

(Indorsed) copy of the note
To Captn. Tatham. 11th April 1797"

I certainly collect from this state of things, that there was a coldness between Mr. Marsden and Captain Tatham that did not exist between Mr. Marsden and any of the rest of the family, for some reason or another, I know not what. Captain Tatham was aware of that, for he begins the correspondence in a manner that would imply it. He does not address him as "My dear Cousin," nor even with "Dear Sir," but simply "Captain Tatham's compliments to Mr. Marsden." And he received an answer in the same degree of coldness; and not only that, but it is fol-

Digitized by Google

lowed by another still in the same style. That that note reached the Admiral, I have a right to assert, as this is the reply in my hand. These letters were not used at York, and they have got tossed about, but have been subsequently collected together, and they have been scheduled as they were found. Of these I present my friend with a list.

GURNEY, B.—Hand me a copy of that schedule.

ATTORNEY-GENERAL.—Certainly; I have one for your lordship (handing it up). This note, in reply, says—

"Capt Tathams Comps. to Mr. Marsden and returns him many Thanks for his Kind Attention to the Concerns of His late Brother Henry Tatham and the trouble he has had in Directing the Funeral, As Capt. Tatham leaves Hornby directly he wishes Mr. Marsden his Health and every Happiness

Hornby, Wednesday
April 11th. 1797.

To John Marsden Esq."

Now, gentlemen, I ask, in the name of all our feelings as members of society, with what face can Admiral Tatham, in the year 1834, attempt to wrest from Mr. Marsden the right of disposing of that property which he had seen him from day to day acquire and enjoy, when, in the year 1797, he addresses him in these terms, "Wishing Mr. Marsden his health and every happiness." Why did he not rescue him from his degraded life, and see that his comfort and happiness were secured to him, as far as they could be, during his existence? But what right has he now to say, "You had no power to dispose of that property—you had no right; and, therefore, I will step in and take every particle of it"? While I am stating these observations as to that note, as to his wishing Mr. Marsden health and happiness, I may add, that about a fortnight before he sent the caveat to Mr. Sharp, he met Mr. Sharp and Mr. Law, of whom he asked as to the health of his relation Mr. Marsden, and he sent by him a message—"Do me the kindness," said he, "to tell him he has not a better friend in the world than I am." He begged that that message should be sent to his relative John Marsden, then upon the verge of the grave; but the moment when he learned that he had departed this life, and had not made a will in favour of him, Admiral Tatham writes a note to Mr. Sharp and sends a caveat; and now, he says, "I will drag forward the whole history of the deceased, from the moment of his being in the cradle down to the moment when he went to the grave,—I will assail him in every way possible,—I will expose all his foibles,—and state all the facts I can collect relative to him." Sometimes I fear it will turn out to be mere fancies,—not the fancies of Mr. Marsden, but of those who come to tell you about him. Admiral Tatham is to-day to say, that that individual was utterly incapable of disposing of his property. You are to hear every thing about what he said, and every thing about what

Digitized by Google

Digitized by Google

Digitized by Google

he did, and the more especially if it can be shewn he ever did one act, not distinguishing a person of intelligence and sound mind, from the mere idiot, " not merely the individual in a degraded state, but even metaphysically below some of the superior orders of the brute creation."

The next of these miscellaneous letters I shall present to you is one of Mr. Lister's, the father of Mr. Lister Marsden. Now I admit that Mr. Lister was a near relation: he was on terms of great intimacy with Marsden: Mr. Lister must have known all about him, as they actually lived together for weeks at one another's houses. Mr. Birkbeck, of Settle, recollects meeting Mr. Marsden at Mr. Lister's. I believe, from his parole testimony, you will find that he was in the habit of seeing Marsden in that house. But is it to be said that Lister writes to him, or does any of those acts (Mr. Lister being a clergyman and a person of considerable property): is it likely that, with a character of the highest respectability, he would be capable of any of those acts? No, gentlemen, I am wrong, I understand Mr. Lister, the father, was not a clergyman. Mr. Anthony Lister writes to Mr. Marsden this letter without a date—

"DEAR SIR,—I have sent to Mr. Lister's steward about the hounds, Mr L is at present in France but is expected home the 28th or 29th of this Month when an answer will then be given Fitzgerald is not yet arrived but begs by letter that Miss Tatham will send his boots over here by the very first conveyance as I expect him to day, shou'd he not come he will loose all Fishing for this Year as this week is the last. Mrs Lister joins me in best regard to you all, Excuse immense haste

John Marsden, Esq.
Wennington Hall

yours most cordially
A LISTER"

Gentlemen, the next letter I submit to your consideration, and that of his lordship, is a letter from Mr. Henry Bickersteth, the surgeon at Kirkby Lonsdale, the father, or some relative, of the eminent surgeon at Liverpool, and the father of Mr. Bickersteth, who is now a king's counsel, one of the greatest ornaments of the court of Chancery,—a gentleman whose name is well known, although counsel in courts of equity do not get so much known as here at common law in going the circuit. He was perfectly acquainted with Marsden, and he attested one of his wills; and, I believe he attended him as the family surgeon. I shall make out that he must have known perfectly well Mr. Marsden's capacity, otherwise he would not have attested his will. Now, I am told several times over, that may be very true. A man may attest another person's will whether he be imbecile or not. In other words, a man may do a base and profligate thing or not, such as putting his name to a paper, and attesting, by that, that a man is capable of making a will, when, in his judgment, he is not so; and this cause may furnish an instance, for ought I know, of that, but it is not very likely. I hope every one would not do that; but I call your attention to this, that no man of probity or honour,

Digitized by Google

by some downright plain act, such as attesting a deed, that act standing by itself would give rise to such a remark in a court of justice, as, that it is equal to perjury, or that the case is so got up that it is to be proved by circumstantial evidence, when you have no doubt about the facts ; but I am not one of those that will not say you must not only state the facts but prove them to be true, although, at first, circumstantial evidence may be strong; but when you have got such a fact as that a man will attest a deed of an incompetent person, then certainly they are bringing down the profession by creating evidence to produce an impression, at least of a probability so remote that it can hardly be taken into account in human affairs. Here is a letter, the date of which will be made out from a circumstance therein stated. The letter I allude to is from Henry Bickersteth, to Marsden, dated Kirkby Lonsdale, Wednesday morning, which says—

"DEAR SIR,—On mentioning to Mr. Dobson that you said you would have the goodness to come to Kirkby to-morrow to serve him provided he thought there was any occasion for your coming.—As I find that his Opponent in this business is making all the Interest he can, Mr. Dobson thinks it necessary to request the attendance of all his friends on the occasion I have sent you the Act of Parliament to let you see you are a Trustee."

This was about electing a clerk to the trustees of certain roads. Marsden had the power of nominating, but, not having qualified, he had to go over to do so to enable him to vote for Dobson. It appears that Mr. Bickersteth knew his man, and wished as much as possible to save him trouble. He then says—

"and by equalifying, you need have no fear of their troubling you on other business—You were appointed as Mr. Dobson has put down in the place of your Brother I am sorry to inform you that the meeting is appointed at so early an hour as ten o clock tomorrow Morning.—

"I hope you will let me have the pleasure of your Company to a family Dinner, & if Mr. Wright can accompany you I shall be very glad to see him.

I am Dear Sir very sincerely
Yours &c. H. BICKERSTETH.
K. Lonsdale Wednesday Morning."

Now, upon receiving this letter, it appears, next morning, Marsden did go as requested. He did qualify and vote for Mr. Dobson. I do not know that I am right in saying that he voted in the majority ; but, suffice it to say, that this letter was followed up by a vote being given and his qualification adopted, and the meeting did not trouble him with any other subject on that trust again.

The next is a letter from Major Ferrand, whose name I mentioned in the course of what I stated at the outset. I do not know whether he be known to any of you, gentlemen, by name or otherwise, but I believe it is perfectly well known that his station in life rendered him free from the possibility of suspicion, that he would have had converse with a man in Marsden's situation, unless his appearance satisfied him that he was a competent and

Digitized by Google

Digitized by Google

Digitized by Google

sufficiently intelligent man to manage the ordinary affairs of life. I think Major Ferrand had bought some property of him, and consequently he writes Marsden thus—

"DEAR SIR,—I take the first opportunity to return you my sincere thanks for your kind present of a very fine Salmon which arrived in perfect good condition last night I shall this day invite some Allerton and Wilsdon friends to partake of your bounty."

That was part of the estate sold to him. Then he says:—

"where we shall not fail to drink success to Hornby Castle and the Fisheries that they and the proprietor thereof may long Live and be successful, I beg you wou'd give my respects to Mr. Wright and assure him I shall not forget to send him a pointer welp of my very best breed I have a Bitch with pup now, got by a remarkable fine Dog of Major Claytons which Lord A Hamilton brought from the King of Naples so that we are sure we have nothing of the English Spaniel in the Cross, which constitutes the excellence of my breed of Gun Dogs, I will send it to the care of Mr. Lister of the Bell to be forwarded, believe me Dear Sr with great respect your obliged and obedt. Sert.

BENJ. FERRAND

(Addressed) John Marsden Esqr

St. Ives Feby 25 1798 By Manchester Hornby Castle near Lancaster."

This is a letter written in the year 1798, and I believe has never been before upon his lordship's notes.

The next letter I call your attention to is one in 1799. Mr. Marsden at different periods of his life had church patronage to dispose of, and amongst others he had the chapel at Hornby. I think for some time he had the advowson of Tatham; certainly he had that of Gargrave. Mr. Ellershaw had been introduced by him to Hornby Castle. Ellershaw was giving it up, and at that time he wrote this letter. Mr. Ellershaw is dead, and therefore I cannot call him; but I am about to read a letter which concerns the ordinary business of life, not merely those commonplace attentions and civilities which, although a man may not be too particular about them, no man would lavish upon an idiot. But he writes upon those ordinary terms of business which no man would dream of writing to one who was incompetent. It is a letter, therefore, most seriously affecting Mr. Ellershaw's character in every point of view, unless Marsden were that sort of person that I represent him to be. He says—

"DEAR SIR,—I should ill discharge the obligation I feel myself under, if, in relinquishing Hornby, I did not offer you my most grateful acknowledgments for the abundant favours of your Hospitality and Beneficence. Gratitude is all that I am able to give you, and I am happily confident that it is all that you expect; I have only therefore to assure you, that no Circumstances in this World will ever obliterate from my Heart and Soul the Remembrance of your benevolent Politeness. May the good Almighty long bless you with Health and Happiness, and when his Providence shall terminate your Xtian Warfare upon Earth, may the Angels of the Lord welcome you into Blessedness everlasting. It will afford me Pleasure to continue my Services during the Vacancy, if agreeable to you. With every Sentiment of Respect and Affection to yourself and the worthy family at the Castle, I hope you will ever find me,

Your grateful faithful & obliged Servt.

Chapel le dale HENRY ELLERSHAW

3d Oct: 1799—Please to deliver the Inclosed to Mr Wright.

Digitized by Google

GURNEY, B.—It was read in the speech, but rejected in the evidence, on the former occasion. The objection was not taken during the speech.

ATTORNEY-GENERAL.—Perhaps your lordship may remember the argument that took place upon it. Now, gentlemen, unless Mr. Ellershaw were one of the meanest of hypocrites, or, as bad as Marsden is alleged to be in point of intelligence, or that Ellershaw was one of the basest of his profession, could he have parted from him by a letter expressed in those terms? Could he have done this unless Marsden were an individual calculated to inspire that gratitude, esteem, affection, and respect with which he spoke of him in that letter? Gentlemen, I have here also a letter from George Barrow to Marsden. I am not certain that it has ever been read before. He was a brother of James Barrow, who afterwards came to the bar. He was drowned in the river Eden. He came to the bar, and Thomas also came to the bar. But the one who writes this letter remained as an attorney. He writes him thus:—

Essex Court Temple Novr. 18th 1798

"DEAR SIR—I embrace the Opportunity of sending to you by Mrs. Ball of Dolphinlee two pieces of Music—The Prince of Wales's New Military March and the Princess of Wales's Cotillon—The Prince of Wales's New Military March" is a very great favourite and hath a grand effect when Played by the Duke of York's Band—If they should amuse you in the solitude of the Winter months "when wind and rain beat Dark December" and you are prevented from taking your accustomed Walks it will give me great Pleasure—of the Hospitality of Hornby Castle I shall ever retain a grateful sense—I saw our Friend Bleasdale very lately—he is over head & ears in Parchment but begs to be most kindly remembered—

I am Dear Sir yours sincerely

John Marsden, Esq. GEO: BARROW."

Now, gentlemen, here is a letter from Marsden himself in the year 1800, and it is the original letter sent to Mr. Baldwin. I have also a copy of it, which Mr. Marsden himself kept, so that you may compare the one with the other, and you will observe that Baldwin was his solicitor for many years. He states this: "Dear Sir, I have sent my game-keeper with this." Gentlemen, this is the letter of which we have the original, and it appears that Mr. Baldwin acted upon it. Gentlemen, a copy of the letter and the original letter itself I hand to my learned friend that he may compare them together, or he may do it by and by. In the mean time, I may make this remark before I go to the answer, and that is this:—All these papers were produced in the court of chancery, every one of them was scheduled to the answer, and access given, so that copies may have been taken from the moment the order came to inspect them, which was in the year 1830. Copies were handed over of all letters then produced, of every sort and kind. At that time all were produced with the exception of twenty, thirty, or forty letters, some of which I have stated

Digitized by Google

Digitized by Google

Digitized by Google

to you. The other side have had the opportunity of comparing them and putting them together. They have been invited to compare and sift them down to this hour, and there has been no suggestion of an intention to impeach this correspondence; and, therefore, we may take it that these letters were all written by Mr. Marsden's own hand, and the result of that is that my friend must admit that the same conclusions are to be drawn from them. This may be also applicable to some of the other letters, such as those of the professional man; a surveyor, who was transacting some of the ordinary business of life with Marsden, and nothing has been discovered in this correspondence from one end to the other to impeach his general character, nor the character of any of the parties who carried it on.

I now come to another important letter. I have an answer from Mr. Baldwin directed to Mr. Marsden himself. Baldwin was an eminent attorney in this town, at the head of the profession. He had prepared many of the instruments, was a party to some, and a witness to many of them. All that might have been done (though perhaps you may say you cannot well account for it), but the suggestion of my friend is, that this correspondence was fabricated, for notwithstanding what appears to have been executed and the answers given by Mr. Marsden to Wright, when at a distance from each other. Such are the suggestions we are to have by and bye, that all these deeds are pure machinery, and that all these documents, letters, and conversations, are to be placed against all those being real transactions of life. That is what is to be alleged on the other side; but I cannot dismiss this letter of Mr. Baldwin without this observation—if Mr. Marsden were incapable of making a will, then Mr. Baldwin must be considered to have been a base attorney, or must be considered as a villain; as having pursued a conduct calculated to impose upon others by entering into a foul conspiracy, and, if alive, would be to be received with disgust, and considered as contemptible, and as one who ought to be driven from society as not being fit to mingle in it. I say that, and I say it fearlessly, because Baldwin received a letter directing him as to where he was to go and what he was to do, and he answers it in a strain which shows his idea as to Marsden's mind. Marsden writes him, "I hope there will be no mitigation of this penalty; if I thought there would, I certainly would bring an action. My intention is to show that my property is not to be trespassed with impunity." Gentlemen, it used to be so. I do not know much of the game laws now-a-days; but, be that as it may, such is the strain in which he writes to Baldwin. Baldwin receives that letter from a man who, according to my friend's case, was an idiot. Mr. Baldwin must have known it was a genuine letter written by Marsden, and at all events a letter written to extract an answer. Unless, therefore, Baldwin were to be taken from his grave to be stamped with disgrace and

Digitized by Google

infamy, Marsden was competent, in his opinion, to make that will which is now the subject of discussion. Baldwin, in his answer, writes thus:—

"DEAR SIR,—I should wish to hear what the witness against Lawson can prove so as to be enabled to prepare the information as it is necessary that the information and the future proceedings should all correspond.

I will take care the business shall go forward and will see you soon upon the subject Mrs. Baldwin desires her Compts to you am

Dr Sr your mt obt hble Sert

JNO BALDWIN.

Lancaster, 1st Mar 1800

addressed

John Marsden, Esq. Hornby Castle."

Will my learned friend, in the town of Lancaster, where Mr. Baldwin has left many friends and relations, to whom his memory ought to be dear, will he say that Baldwin was a party to a conspiracy by which Wright was enabled to put a pen into the hand of a fool, and state to or direct him to write to Baldwin, as I want to get an answer from a respectable attorney, that I shall use thirty-four years after I have got it. If, in this way, he so impeach the transaction, I do not know how we can get any evidence of the common transactions of life. How are you to be satisfied that I am not dreaming, and that I may imagine I find myself in my residence in Guildford-street, instead of addressing you upon this subject in the town of Lancaster?

If I be to be believed in my senses, addressing you upon the subject, what answer can be given to this testimony of scores and scores of individuals, who knew Marsden to be capable of doing acts in which they concurred in this natural manner. For this correspondence is better than deeds, purchases, and contracts. Here are transactions comparatively trivial described, and unless you suppose that even these were fabricated for the express purpose of deception, they speak volumes to satisfy you of the integrity and justice of this case. I say again, unless Mr. Baldwin were, when alive, a man who disgraced his profession and his relatives, the case which this letter furnishes of Baldwin's acts and proceedings, is not to be got rid of by my friend stating that all this was mere matter of arrangement, or that Wright had a magic wand which affected every one within his circle, or which made every one who came near him a conspirator in this extensive crime,—a crime which spread over fifty years, and involving in its orbit changes affecting no less than three or four hundred individuals. Here is a letter from Baldwin of a later date, in which he says:—

"DR. SIR,—We will take care to do what may be necessary about the notices, and am sorry you have been troubled about them which could be in no ways requisite as we would have admitted the service upon you,—pray give my Compts. to your stanger and the family

I am Dr. Sir Yr. mt. obt. Servt.

Addressed J. Marsden Esq JNO. BALDWIN."

Digitized by Google

Digitized by Google

Digitized by Google

I do not care whether Marsden had seen Baldwin or written to him in the interval: if he had done either the one or the other, we have no evidence, nor any copy of the letter; it is sufficient that here he says, "I am sorry you have been troubled about them, which could be in no ways requisite, as we would have admitted the service upon you."

The next letter I happen to find here, is one I cannot use, but I cannot pass it over without adverting to the writer, and it will be evidence in its own way. It is a letter from Mr. Baron Bolland to Marsden. When Baron Bolland shall appear as a witness in this cause he will tell you he was an inmate at Hornby Castle for some time, that he had abundant means of judging of Marsden, and that he had actually formed a judgment upon the subject of his capacity; he will state to you the result of that judgment. And, farther, he must say that, while at Hornby Castle, a little before or after his visit, he had composed some poems which he published—that he sent a copy to Mr. Marsden, and that this is the letter which accompanied that copy. Mr. Baron Bolland, however, is alive to speak for himself; he can state for himself that, which if he were dead, this letter would speak for him. I shall show him the letter, and ask him if he addressed that letter to Marsden. My friend may then look at it, and cross-examine him upon it, and he will say whether the transaction therein expressed at that time corresponds with the expression he would use of the same matter at the present day. But, gentlemen, it is impossible it can be otherwise. Gentlemen, to recur to what I have said on the subject of Baldwin, I submit that you cannot come to a contrary conclusion without feeling that it is utterly impossible for any man who knows Baron Bolland to impute to him any intention to mislead. I admit that the valuing his testimony will depend more upon his means of judging than upon his power of recollecting those former circumstances at the present day.

Into his hands I have a right to put this letter, to refresh his recollection of what he then wrote, and his opinion of the man he wrote to. My friend will ask me for the letters, but I will say, in answer, "Show me the language you used as to that gentleman." I respect Baron Bolland, whose character is too high to require us to do more than merely to glance at any alternative or reasoning upon the subject. His station is too high—his character too well known to require any investigation. If ever there were one gentleman connected with our profession more in universal esteem, and more beloved than another, I should say Mr. Baron Bolland is the individual. He is not here; for if he were, I should not make this tribute which I now do, to his character; he is the man, and I appeal to all my friends around me, and even to the learned judge upon the bench, if it be not a fact that there never was any individual, filling that high station upon the bench, or formerly

Digitized by Google

his situation at the bar, more consistent with honour, than Mr. Baron Bolland. You, gentlemen, will judge for yourselves, but I cannot help saying that an individual such as Baron Bolland, staying at Hornby Castle, morning, noon, and night, going out early and returning late, with Mr. Marsden, seeing him at meals, and seeing him in company with the different members of the family, as well during a total absence of all ceremony, as during a period of bustle, of fishing, shooting, and other amusements, must have known well Mr. Marsden's mind, his character, his competency, his knowledge, and his station and treatment, having seen Mr. Marsden in every situation he could be placed. I shall venture to put to him this question—Mr. Baron Bolland, upon the faith of a Christian, on the oath you have taken, and on the word of a gentleman and man of honour, had you the means of knowing Marsden, so as to satisfy yourself that he was a man of intellect, and that he had sufficient capacity to conduct himself properly in society. And I shall also ask him, had you the means of judging as to his competency to make a will, and if he had made one, would you have hesitated to put your name to that will, as an attesting witness to the execution of it by him, and then gentlemen you shall have Baron Bolland's answer.

Gentlemen, I have here a letter written in 1802, to Mr. Marsden, by Mr. William Bradshaw, the brother of a gentleman who shall be produced before you as a witness. He says—

"Dear Sir,—The Perusal of your Note gave me much concern for I am far from having a wish that a Servant of mine should trespass upon any Gentleman and you may depend upon it I shall give him strict orders not to come upon your Grounds in future. The fact was Mr North requested me to send my Servant to kill him a few Birds in consequence of that I sent him with particular directions from me not to go into your Liberties knowing neither his nor any other Gamekeeper has a right out of their own Range

I am Dear Sir yours Sincerely

Halton Hall Septr 8th. 1802 W B BRADSHAW.

Addressed John Marsden Esqr Hornby Castle."

Mr. Bradshaw knew Mr. Marsden perfectly well. Mr. Marsden knew Mr. Bradshaw, and Bradshaw was perfectly aware that Mr. Marsden was one of the gentlemen who held the pall at his brother's funeral. He had another brother who was rather intimate Marsden, and I will call him to tell you how that individual was treated, which will confirm that which will be stated by those who had the best means of knowing what treatment he deserved. Now, gentlemen, I have the copy of a letter written by Mr. Marsden to Mr. Anthony Lister, dated the 23d of October, 1802. And I have also the answer to it, written by Mr. Lister himself. Mr. Marsden's letter is in these words—

"Hornby Castle 23d Octr. 1802.

"Dear Sir,—Having lately made some Purchases in Hornby, which is to be paid for at Candlemas next, and am laying out a considerable sum of money in erecting a Steem Engine at my Colliery in Tatham, I find I shall be a little short of Cash at that time, and being informed that you had money at Interest I take

Digitized by Google

Digitized by Google

Digitized by Google

the liberty of beging you would accommodate me with it at Candlemas, that there may be no misunderstanding between us I will give you five pr. Cent and pay you half Yearly, I took this opportunity of writing that if you had to give notice to the person who had it, he could have no reason to complain that he had not timely notice, Your answer will oblige

Dr. Sir Your's truly
J. MARSDEN.

To A Lister) Esq. Belle Hill, Giggleswick."

Your lordship has a copy of this letter, I believe, but in case you have not, I will hand you one (handing it up). Then gentlemen, here is the answer from Mr. Lister to Mr. Marsden—

"DEAR SIR,—To accommodate you with any thing that is within my reach, I shall always feel a pride and pleasure in doing it, but I fear any sum that I have will be smal, however I think I can answer for £500. or about that sum at the time you mention I intend Killing a Woodcock with you at or about Christmas.

I am Dr. Sir Yours truly
Belle Hill Octr. 28, 1802. A. LISTER.
John Marsden Esq Hornby Castle Lancashire."

At Belle Hill, Mr. Marsden went for months at a time, and Lister came to Hornby Castle at other times. This is not the Lister who is now alive. It is from the father of that gentleman, although I shall not be allowed to read that letter, yet it is only to add one more to this list of conspirators, with whom my learned friend is to entertain you by and bye. He was as little likely to become a party to the conspiracy as any man under the sun.

Gentlemen, I made a mistake before about Mr. Dent. I have a letter about Robert Dent. But I have a letter from Mr. John Dent, which says—

Hertford-street, May Fair, 20 Decr. 1804.

"MY DEAR SIR,—I have this Day taken the Liberty of ordering to be forwarded to you half a Collar of Brawn which I trust will arrive safe and in good order. I hope you continue quite well. Permit me to offer you the Compts of the Season & to assure you how much

I am your obliged Friend
JNO. DENT."

London twentieth December 1804
J. Marsden, Esq. Hornby Castle, near Lancaster.
Free J. Dent.

I do not lay much stress upon it. This John Dent was formerly member for Lancaster, and was well known in these parts of the world, as he frequently visited there. Marsden was a voter and had considerable interest at Lancaster.

Although Mr. Dent was the member, and Marsden was a voter, he had pledged his vote the other way. He had always voted for Cawthorne, and against Dent, yet still I suppose my learned friend will tell us that the letter was to bias him. It might be so. It is possible. But still I present this letter to you *valeat quantum*. Although Mr. Dent lived in Hartford Street, May-fair, he must have known pretty well who Marsden was, and it should not go for nothing. Dent would not have written to a man of whom we

Digitized by Google

are to hear such matters as are stated in the former part of my address to you.

Here is a copy of a letter from Marsden to Dowbiggin, dated Hornby Castle, 1st. Jan. 1812. It says you will most probably &c. This Mr. Dowbiggin was the former partner of Mr. Sharp, and I think the firm was formerly Baldwin and Dowbiggin, and then it came to Dowbiggin and Sharp. it says—

"Hornby Castle 1st Jany 1812

"DEAR SIR—You will most probably have seen in the Lancaster Paper on Saturday last an adverstisement for a Vestery meeting to be held at Hornby on Monday the 6th Inst. I have been told that Remington of Melling has got the Chapel Wardens to call it for what purpose I do not Know. Mr. Wright having been unwell for some time cannot attend to business as he could wish.

I shall be glad to see you here on Friday next to consult you upon that and other business of consequence which I wish to have done—Mr. Wright desires his respects I am

Dear Sir Yours very sincerely

J. Dowbiggin, Esq. JOHN MARSDEN."

Now, Gentlemen, you will observe that this is a letter in which Mr. Marsden, finding Mr. Wright not well enough to give him any assistance in some matter of business, he sends for Dowbiggin, at least we may take it for granted that this was not a letter that was never sent, nor was it a mere piece of moonshine. It serves to show how natural it is. My friend is to say they are the composition of Wright, but not of Marsden. In fact, that Marsden was nobody—that Wright was every body, and did every thing. Here is a letter from which it appears that Wright, being unwell, Marsden wrote to Dowbiggin to come over and transact some business with him. A great many of the deeds were executed and transacted in the presence of Dowbiggin, and this letter goes far to repel the insinuation that Wright kept Marsden snug to himself, and that there he was kept in a room where nobody might see him; the butcher and the baker might call, but they were only permitted to send in their names or their bills and go off again; nobody but Wright mixing in society with him; there it said he was shut up so as to see nobody, and that nobody dare to come near him. This letter, however, affords pretty good evidence that if Wright happened to be unwell, Mr. Marsden found it necessary to send for somebody else, so that there can be no doubt he was visible occasionally to others, unless my friend choose to say, "but you cannot find that Dowbiggin actually attended there when somebody else was present, and heard all that passed between them." Gentlemen, you are too much men of business to treat the subject in that way. This letter by Mr. Marsden to John Dowbiggin is dated Hornby Castle, 1st. Jan. 1812, and says—

"Hornby Castle 1st. Jany. 1812.

"DEAR SIR,—You will most probably have seen in the Lancaster paper on Saturday last an advertisement for a Vestery meeting to be held at Hornby on Monday the 6th Inst. I have been told that Remington of Melling has got the

Digitized by Google

Digitized by Google

Digitized by Google

Chapel Wardens to call it for what purpose I do not know. Mr. Wright having been unwell for some time cannot attend to business as he could wish. I shall be glad to see you here on Friday next to consult you upon that and other business of consequence which I wish to have done. Mr. Wright desires his respects

I am Dear Sir Yours very sincerely

JOHN MARSDEN."

Copy of a Letter to John Dowbiggin, Esqr. Lancaster.

Now, Gentlemen, I have to state to you a letter from Mr. Marsden to John Fenton Cawthorne, Esq. the member for Lancaster, and the answer thereto. I am afraid my learned friend differed from Mr. Cawthorne in politics. Mr. Cawthorne is dead, and how Mr. Marsden should have agreed with Cawthorne I do not know, but I hope you, gentlemen, will not reproach his memory, even if he differed upon those matters.

SIR J. SCARLETT.—He would probably have supported the Government.

ATTORNEY GENERAL.—My friend says it is a very probable thing that he would have supported the Government; I think Mr. Cawthorne would not have supported the Government, but whether he did or not, it would be as my learned friend and I do in supporting the Government, when they are doing right, and not when they are doing wrong. In that letter, dated Hornby Castle, 20th. March, 1813, Mr. Marsden writes to Cawthorne thus—

"Hornby Castle 20th March 1813.

"DEAR SIR,—There is now a Bill before Parliament for an Enclosure of the Commons within the Manor of Whittington, which may effect my Rights very much. I will thank you to get one, and send it down to me, that I may have an opportunity of examining it. and you will much oblige, Dear Sir,

Your obedient and very humble Servt.

JOHN MARSDEN."

Copy of a Letter to J. F. Cawthorne, Esqr. M. P.
Fattons Hotel, London.

That is a very good letter for a constituent to write to his representative; we do not do so now-a-days as you, gentlemen, are aware.

Then this is the answer which Mr. Cawthorne writes to Marsden:—

"March 24th 1813

"DEAR SIR,—I had the pleasure of Receiving your Letter this Post, and have sent you Down, the Whittington Inclosure Bill as you desire, and shall be ready to attend to any commands you may give me on that Business. I beg my best compts. to Mr. and Mrs. Wright & Family & believe me

Dear Sir your much obliged huble Sert.

J. F. CAWTHORNE

(addressed)
London March twenty four 1813
John Marsden, Esq. Hornby Castle, Lancaster.
free J. F. Cawthorne."

That letter has evidently gone through the post-office, as you will see. There is the letter, and here is a copy of Mr. Marsden's letter, which he himself kept. It is highly probable that Caw-

Digitized by Google

thorne did not keep his letters, as it is not the custom for all members of parliament to keep all the letters they receive from their constituents.

The next letter I have to state is dated 29th July, 1814, from Mr. Townley Clarkson to Mr. Marsden. We have a deposition of Mr. Townley Clarkson, which I will state or read to you by and bye. The reason I read this letter is to show when the act was done which is alluded to in the letter. It is dated Hornby Castle, July 29th, 1814, and he says,—

"Hornby Castle July 29th 1814

"DEAR SIR,—I cannot quit your hospitable mansion without expressing my regret that I should unfortunately have made my visit to it at a time when you were absent. I had hoped that I should have reached it on the morning of your departure, before you had gone from home but unavoidable delays in Lancaster prevented me. To Mr Wright you know I am much indebted and I am sorry to say that for the last two or three day I have been obliged to put Mrs Wrights kindness to the proof, having been much of an invalid, tho' now by good nursing quite brought round again. It as also been a disappointment to Mr Lushington who joined us here on Wednesday in not meeting with you. The very kind and substantial remembrance left for my little nephew Henry requires a grateful acknowledgment—

I am Dear Sir Your's sincerely
TOWNLEY CLARKSON.

John Marsden Esq. Hornby Castle."

I believe there was some little sum of money left, which may be the circumstance alluded to.

Then here is a letter addressed by Marsden to Mr. Giles Bleasdale. It is all in the hand-writing of Mr. Marsden, and is dated Hornby Castle, 6th Feb. 1801. He says,—

"Hornby Castle 6th Feby 1801

"DEAR SIR,—I take this opportunity of writing by my Tenant Leonard Willan who is coming to Town I received all the Books except Dr Garnetts Tour in Scotland, I sent up two setts and there is only one returned. I wish you would order a Curriccle of your Friend & to have it made and sent down as Soon as he can with Harness &c as to the Colour you and the maker can settle that I wish to have a complete good one and as little carved work about it as possible. please to inform me of the price And I will remit you the money

I am Dear Sir
Your most obdt Hble Servt.
J: MARSDEN

To Mr. Bleasdale London"

In the next place, here is another letter from Marsden to the same person, Mr. Giles Bleasdale, dated Gargrave, Aug. 17th, 1819. He says,—

"Gargrave, Augt. 17th. 1819

MY DEAR SIR—I shall leave Mr & Mrs. Listers on Monday next, and shall be with you in good time in the Evening. I shall avail myself of your polite invitation, and stay over Tuesday.

I am, My dear Sir
very faithfully yours
JOHN MARSDEN

P.S. Mr & Mrs. L desire me to remember them very kindly to you
Giles Bleasdale Esqre.
Wenning Cottage Lancashire"

Digitized by Google

Digitized by Google

Digitized by Google

This letter, gentlemen, has the post-mark of Gargrave upon it, and is addressed to Giles Bleasdale, Wenning Cottage, Lancashire, where he lived; and from the contemporaneous letters of this period, it shews they were intimate, and that Marsden was a guest at the house of Bleasdale occasionally, and that he was a visiter at the castle, so that they could not fail to know each other; and upon this point I need only say, that where people will get together there is no difference of opinion, nor antipathy to Foxites to be repelled, and no feeling of the mind to prevent an intimacy together being formed. If persons breakfast, dine, and sup together, they cannot fail to know whether either one or the other be capable or incapable of making a will. It is on that account this letter is very important. I hand his lordship a copy of it, and will now proceed to something else (handing up a copy to his lordship). Now, gentlemen, the date of the will is in 1822, and here is a note from Marsden two years preceding, addressed to Mr. Bleasdale, in these words,—

"Mr Marsden presents his best respects to Mr Bleasdale and if he has not wrote up to London about the Will shall be much obliged to Mr B. when he does write to desire them to send a Duplicate along with the Will

Hornby Castle March 7th. 1820.

Giles Bleasdale Esqre. Wenning Cottage"

The object of this letter is to shew that Marsden was in direct communication with Bleasdale, as to the will which was executed in 1822. This is by no means unimportant, as showing there was a good deal of correspondence and intimacy between them before this will was in agitation; at all events it shows that Marsden and Bleasdale were in immediate and direct communication. I have by and bye to state to you a paper in Marsden's own hand-writing upon this subject, but I had better read it when I come to advert to the will, as it is connected with it.

Here is a note from Mrs. R. Hesketh, which was read upon the last trial, and here is also Marsden's answer to it; that of Mrs. Hesketh is dated the 5th of September, 1811, and in it she says,—

"Mrs R: Hesketh presents her Compts. to Mr. Maraden & should esteem it a *particular favor* if he would allow her to take the house that Betty Huddlestone now Lives in—Mrs. R. Hesketh would not have taken this liberty but feels very anxious that the poor Old Woman should not be removed and understands that Richard Holme is leaving his Farm & house and of course Betty Huddlestones House will be to let—Mrs. Heaketh begs leave to present her best Compts. to Mr & Mrs Wright.

Thursday Noon Septr 5th. 1811

To John Marsden Esqr Hornby Castle"

To that note Mr. Marsden writes in answer thus,—

"Mr Marsden presents his best respects to Mrs. R. Hesketh and has great pleasure in complying with her request as to the house at Wennington in which Betty Huddlestone lives—It will give Mr. Marsden great pleasure to receive more favorable accounts of Master Charles's health and he begs to trouble Mrs. Heaketh with his best Compts to Miss Rawlinson and Mr Hesketh, in which Mr. and Mrs. Wright join.

Digitized by Google

Mr. Marsden has to apologise for not returning an earlier answer to Mrs. Hesketh's note, but did not receive it until Sunday & he has since been, several times from home.

Hornby Castle, Friday Morning 13th Septr 1811.

Indorsed 13th Sept. 1811.

Copy of a Note to Mrs. R. Hesketh, allowing her to take the house at Wennington for Betty Huddlestone."

There is only a copy of it in Marsden's hand-writing.

Gentlemen, I have another letter from Mr. Armitstead, who is now dead; he was a clergyman; he was rector of some place in Cheshire, and master at Gisborne school. Perhaps some of you, gentlemen, have a recollection of it. My friend says it was at Chester; well, it will be equally applicable. It is dated Backford Vicarage, Jan. 22nd, 1817, and he says,—

Backford Vicarage, Jany. 22nd, 1817.

"My Dear Sir,—I have not forgot my promise of sending by John Wright the likeness of Prince of Saxe Coberg I have added to it also that of the Duke of Wellington of which I beg your acceptance. They are mere Trifles, but yet I hope they will convince you that I do not nor ever shall forget the civilities & attention I have ever experienced at Hornby Castle during the many happy days & Weeks I have spent there.

The likeness of the Duke of Wellington I am told by officers who have served under him is a very good one. He is represented you will see with a White Neck Handkerchief which in Spain & Portugal he always wore.

Mrs. A. unites in best regards to you & Mr. & Mrs. Wright the Young Ladies, &c.

I am, my Dear Sir Yours most truly
THOS. ARMITSTEAD.

John Marsden Esquire

Hornby Castle, Lancashire."

Here is also another letter, supposed to have been written by the same gentleman, who had been staying there for some time, in which he says—

"My dear Sir,—I beg your acceptance of a copy of the Bishop of Chester's Charge & also of his Confirmation address—I am sure you will be pleased with them—The Bishop Speaks in Raptures of the Entertainment he received at Hornby Castle, and he is pleased beyond measure with the fine situation &c If I do not get up to Hornby Castle in the course of this Month I doubt not but I shall meet you at the Musical Festival in Liverpool in Octr. It begins on the 7th, and afterwards I trust you will spend a Week with me.

Pray make Mrs. Armisteads & my best Complts. to Mr. & Mrs. Wright Margaret & also the other young Folks to the Proctors & Mr. Bleasdale also

I am my dear Sir
Yours most truly

Backford Sept. 9th, 1817. THOS. ARMITSTEAD."

This is not a letter which could have been addressed to a born idiot. The bishop herein alluded to, is the present bishop of Bath and Wells, who one day dined at Hornby Castle, and was there received by Mr. Marsden as owner of the estate. The bishop

Digitized by Google

Digitized by Google

Digitized by Google

being about to hold a confirmation at Hornby, Mr. Marsden thought it right he should cast upon himself the honour of entertaining him that day. The bishop accordingly dined there, and this letter states "the bishop speaks in raptures of the entertainment he received at Hornby." If any body would refer back, he would find that there was a festival of that kind in 1817, at Liverpool; and therefore, we cannot doubt that this letter is perfectly genuine, and I think I have a right to say this to him, that that visit of the bishop showed that Marsden's company was worth having. The Mr. Bleasdale therein alluded to, was the man who prepared the will. Mr. Procter is one of the witnesses that signed it.

Here is another letter from Armitstead, dated Bangor, August 27, 1821, in which he says—

"Bangor Augt 27th 1821

"My Dear Sir—As Mr Bleasdale is not able to come with you to the Musical Festival, I hope you & John will prevail upon two of the young Ladies to accompany you: or upon Mr & Mrs Wright. I am paying a short visit to this beautiful part of the world and amongst other objects to Bangor Place to which delightful spot I have had many invitations before—You will I am sure be glad to hear that my good friend & Patron the Bishop is quite well again—He had a dangerous attack some time ago but is got quite over it Mrs Majendie tho' the Mother of 14 Children and Grand Mother to I know not how many still looks not more than forty. Mrs. Capt. Majendie your relation is now confined so that, as the Bishop assures me, you are not to look for them this Autumn.—They are about purchasing a place in Berkshire One of the Bishop's son's in Law & most likely his Lordships Son Stewart Majendie and I sail over to Anlisea tomorrow—and on Wednesday I return home again. The Bishops Palace is a most excellent House and in a lovely situation though it commands no view Not even of the sea, tho' within a few score yards of it I was at the Cathedral three times yesterday and was much pleased with the music—The organ is good & the Organist Dr Thring excellent the Cathedral however is but small & not at all well looking.

"Pray give my best regards to all at Heysham House or Hornby Castle—not forgetting our friend John Wright

I am My Dear Sir

Yours most truly

THOS ARMITSTEAD

John Marsden Esqr. Hornby Castle, Lancaster.
Free He Bangor."

These are all the letters under the class miscellaneous letters, I mean to trouble you with. I may now mention that there was a gentleman of the name of Alexander Marsden, of great respectability, who entered into a correspondence with John Marsden, which went on to a considerable length, and it appears the bishop of Bangor's son married one of his daughters, in the year 1820; And Mr. Armitstead calls the person a near relation to Marsden in consequence of that: and in consequence of that, Mr. Alexander Marsden asks whether any relationship existed. Marsden sends him an answer, stating all his ancestors, which showed that although it were a very distant relationship, yet it was very probable he was a relation coming from the same quarter. I have

Digitized by Google

gone through, I believe, all the letters I call miscellaneous correspondence, and I now beg leave to state the correspondence between Mr. Wright and Mr. Marsden himself, and some other branches of the family, which will let you into the interior of the castle, showing how many were living there; and I will show that Wright was not by any means always present, as that is the suggestion, and that Wright always either wrote or dictated those letters to Marsden.

You will see by the post mark upon those letters, that Wright was occasionally in London, and Marsden in the country. But, says my friend—"Mrs. Cookson was there," but how was it after she had died? Then say they, "there was Mr. Lister," so that there is no end to that. Then after that Mr. Lister was dead. Then let us see how there could be any body else. How are we to have evidence upon that part of the subject? Is all the world to be calumniated, so as to put Admiral Tatham into possession of this estate, during his lifetime? This is a point my friend dare not touch. Is all the world to be in a conspiracy to give him this estate, although when Marsden was alive, he, Admiral Tatham, dared not whisper the breath of calumny, as to his capacity to transact every branch of the business of life. If every man who says that Marsden could make a will, be to be branded with the appellation of being perjured, and every man who wrote a letter to him is to be considered a conspirator, and every one who transacted business with him is to be looked upon as a fool or a villain, then my friend's case will be made out, but unless he be equal to that, to the fullest extent, the cases are not precisely the same, and he cannot shake the title of Lister Marsden to the will of his relation, for there he cannot succeed. It was universally understood that Lister Marsden was considered to have been the object of Marsden's special favour. There are letters which are addresed by Marsden to Wright, and back again, from a certain member of the family, showing distinctly the character of Marsden —showing what he could do when he was clearly under no other tuition, and had no other assistance than his own plain view of the subject, uneducated as I admit he was. Here is a letter addressed by Marsden to Wright, dated Wennington Hall, 22nd May, 1791, and addressed, "Mr. Wright, at Thomas Barrow's, Esq., No. 2, Inner Temple, London." I need not tell you that the post mark being of Lancaster, and this letter going by post, Mr. Wright must have been in town; so that we have here, an instance of a letter being written by Marsden to Wright, and no Mr. Wright being with him to fabricate it. Marsden, at the same time, making a copy of the letter, and these are both here. I believe your lordship has a copy of it.

GURNEY B.—What is the date of it?

ATTORNEY-GENERAL.—The 22nd of May, 1791. That letter is in these words—

Digitized by Google

Digitized by Google

Digitized by Google

"Dear Sir,—I receid. yours of the 21st. I hope you have had your Health since you left Wennington Upon the perusal of your letter I own it surprised me a little to find the affair of Skirrows not yet compleated and shall be very anctious to hear from you how you go on. When you see Mr. Greene

(the father of the member for Lancaster,)

I will be much obliged to you if you will Settle the accompt with him for my Picture & frame and I will settle it with you when you Return. The Buck that got out of the Park was brought safe to Wennington Hall can give you no account how he was caught till I see you again as it would take up a deal of time to explain it. Their has been nobody here Upon Business since you went should their any body come that want to see you particularly I will take care to let you know in time. As to how we go on with regard to business at Home their is nothing very material but only what is necessary I think my Aunt something better for her Journey. Mr. Tyrrell is now with me and leaves me on Tuesday he desires his compts to you.

Miss Barrows are staying with us and beg to be Kindly remembered to their Brothers."

At that time George Barrow was an attorney in London, and Thomas was at the bar. Then the letter goes on to state:

"Mrs. Cookson and the Ladies join with in Compts. to you
And am Dear Sir with Compts. to Mr. Barrows
Your Most Obdt. Hble Servt.
J. MARSDEN."

Now this letter is dated the 22nd of May, 1791, and here is a postscript to that letter in the handwriting of Mrs. Cookson—

"Sr.—As you was so good as to enquire of my health I did receive some benefit at Dauphin Lee but when I returned home much the same Complaints returned with me but however I wish I had known a Box of Tea was a coming & we are without Tapioca, I shou'd glad to here what chance there is for Harry Tatham.

SARAH COOKSON.

Wennington Hall 22 May 1791
(Addressed)
Mr. Wright at Thos. Barrows Esqr
No 2 Inner Temple, London."

Here is the answer to that letter, dated "London, 25th May, 1791," which states:—

"London, 25th May 1791

Dear Sir—I have just received yours I wrote to you since I sent the Tea down which I supose you will have received."

Now, I call your attention to these circumstances which show the perfect genuineness of the correspondence from these small matters, which remove all suspicion as to the originality and genuineness of the correspondence—that there was no contrivance about it, and that it has all the air of being naturally written.—Then he says:—

"As to the business respecting Skirrows purchase will take up some time yet before it can be completed as Mr. Greene had done nothing in that business since you saw him in Town only sending a Copy of Sr. John Scotts Opinion"

(Sir John Scott was the present Lord Eldon,)

"And the last letter I wrote you will explane what was intended to be done before a Bill could be filed against Skirow I shall waite in Town till I can have Mr. Ferns Opinion"

Digitized by Google

I do not know whether you, gentlemen, are lawyers enough to know that Fearn was an author and an eminent reporter: he was at that time one of the first conveyancers of the day. Then he goes on—

"before whom the case is laid that I may be able to communicate his sentiments to you as I think no time should be lost in having that affair brought to a Conclusion and it is the only thing which will keep me in town any longer Mr. Barrow purposes being at Lancaster in the Course of next week and I should wish to return with him if I can only get the opinion I mentioned above I am with Compliments to the Ladies Dr. Sir Your

most obdt. & very Hble Servt.

G. WRIGHT.

P.S. Mr. Tatham desires his Compts to you all.

John Marsden Esq. Wennington Hall near Lancaster"

That is on the 25th May, 1791, and on the same day we have the answer. That we have not many of these letters, I am not at all sorry; but we have enough of them for our purpose, and no more, because, rarely did it happen that Wright went away, and it did happen, he could be spared but for a very short time, when he went to London; but whether he were more or less, it would be just the same in the case of any person's steward who writes to his employer as to what he has been doing. Marsden answers him thus—

"DEAR SIR—I receid. your letter on the 23rd. I am glad to hear you have done something more with regard to this Business of Skirrows, I shall be very well satisfied to hear the Purchase is compleated as it has been a great deal of Trouble in writing Lettersto no purpose about it Their is a letter come directed to you from Settle which I have inclosed I will be much obliged to you before you leave Town if you will Buy me a Dozen pair of Slippers of different Sizes.

My Aunt joins with me in Compts. to you

And am Dear Sir Your Most Obdt. Hble Servt.

J. MARSDEN.

To Mr. Wright Thos. Barrows Esqr.

No 2 Inner Temple London.

Wennington Hall, 25th May, 1791."

I suppose Marsden wished to have a dozen pair of slippers for the accommodation of his company, after they had had a day's sport. Now, here we have the original letter, and also a copy of it endorsed—"Copy of a letter to George Wright." There was, in this instance, no Mr. Wright to tell him how to write that letter at all, and no person whatever had any authority to tell Marsden what to write. My friend will say there was Mrs. Cookson, but what she could have to do with it, or why she should be a party to any conspiracy, you will have difficulty to conjecture. She took nothing but her cup of tea or tapioca, and, as to business, she never meddled with it. My friend may say "that is all a blind—she was the most artful of her sex, and she, too, took an interest in the destination of this estate, but when she writes, she just writes upon the subject of tea and tapioca." If that were so, she must have been the cleverest of her sex, and a great profligate into the bargain.

Digitized by Google

Digitized by Google

Digitized by Google

Here is another letter from Wright to Marsden which, although it did not come by post, has Marsden's endorsement upon it. It is in these words—

"DEAR SIR,—I have just received yours with a letter inclosed, it was from Mr. Peart respecting the auction duty of Ravon Flatt Estate, it is a matter of no moment but may be settled at any time when I return;—I have got nothing done further respecting Skirrows purchase yet or can I till Mr. Fern has given his opinion.—I can inform you of a piece of news which you will not dislike to hear Lord Elcho is returned from abroad & I hope to be able to get the Deed Executed by him before I leave Town."

Lord Elcho, the son of the Earl of Wemyss, of whom Hornby Castle was bought, (the purchase having been made in 1787,) had arrived from abroad in 1791, and it was thought necessary to get Lord Elcho's name to the execution of a deed; accordingly, he says "Lord Elcho is returned from abroad, and I hope to be able to get the deed executed by him before I leave town," which would make it perfect, and he communicates this to Marsden. Says my friend, "this was intended to have been handed over to Mrs. Cookson, as Marsden, poor fool, knew nothing of it." Then the letter goes on to state—

"The Slippers, you mentioned, was sent down with the Tea and some kind of Composition which Mrs. Cookson desired to be got for Cleaning Iron when I can inform you of any other proceeding of ours hear you may depend upon the earliest information I am with Compliments to Mrs. Cookson Dr. Sir
London 28th May 1791 Your obdt. Hble Servt.
GEO. WRIGHT.

Mr. Tatham desires to be remembered to you all.
(Addressed)
John Marsden, Esq. Wennington Hall Lancaster"

This is new, and having a copy attached, I will hand it over to his lordship, (handing it up.)

Gentlemen, the next letter from Wright is dated 31st May, 1791, and addressed to John Marsden, Esq., Wennington Hall, in which he says—

"DEAR SIR,—The Deed from Lord Wemyss and his Trustees to you has not been yet executed by Lord Elcho who was waited upon this morning desiring he would appoint a time when he would meet us at Lincolns Inn to execute which is the only business which I now wait in Town for I will be obliged to you to send me a Horse to Lancaster on Saturday next as I hope to be there by the Mail Coach if the above business is done if not I will let you know, at all events, I could wish to have the Horse sent, any thing further I can explain when I see you And am with Compliments to Mrs. Cookson Dr. Sir
London 31st. May 1791 Your obdt. & very Hble Servt.
G. WRIGHT.
(Addressed)
John Marsden Esqr. Wennington Hall near Lancaster"

Then here is a correspondence between these parties, Marsden being at Buxton; the first of these letters has the post-mark, *Buxton*, upon it. It seems that Mr. Marsden accompanied his aunt to Buxton for the sake of her health, and Mr. Wright was not there with him, for these letters are addressed to him from Buxton; this first one is dated Buxton, July 20th, 1791; Mrs.

Digitized by Google

Cookson died in the month of November that year, and as she was very ill certainly she contemplated her own death; she only lived a few months afterwards; and I think you may take it, that, in all probability, what she was doing at that period was under the impression that she had not long to live in this world. I think the act which she did at last was not likely to countenance or protect a fraud. Marsden wrote to Wright in these words—

DEAR SIR,—I receid. yours the 19th. am sorry to hear you had so fatigueing a journey but I hope you will get the better of it in a few Days. I am very glad that the Workmen has gon on so well at Home and shall be glad to hear that the Hay is got in their has been a very fine Seazon for it. I think my Aunt something Better"

Sir JAMES SCARLETT.—What is the date of that letter?

ATTORNEY-GENERAL.—It is dated the 20th of July, 1791, and the other letters are in July and August. This Buxton letter is written in July, 1791, Mrs. Cookson then being in ill health, died in November of that year. The letter goes on to say—

" since she came to Buxton and am in hopes she will receive benefit from the Air of the place. The Money that I receid. of you I think will last for the time we stay at Buxton should I have occation for more before you come I will let you know"

Now it is said that Marsden could not be trusted with money. Here are some people who come to say he could not count twenty; nothing could be more whimsical or improbable than to suppose he was so ignorant of the most common rules of arithmetic. He further writes—

" A disagreeable accident happened last Monday to a poor man employed by the Duke of Devonshire in pointing the back part of the Cresent, the Man fell from above the highest Window which was occationed by the Ballastraids giving way, the man & Skaffold & three rows of the Ballastraids with part of the Cornice fell down to the ground the Skaffold was fixed by a Rope and the noize in the fall was like that of Thunder. I thought he had been killed but it is a happy circumstance the person is in no dainger the Gentlemen here advized him to get bloodded as soon as he could he is rather obstinate about it I will be much obliged to you if you will send us some fruit from Wennington as it is very difficult to get good at this place without paving high for it

My Aunt & Miss Tatham join with me in Compliment to you

I am Dear Sir yours Sincerely

Buxton July the 20th. 1791 J. MARSDEN

When you see Mr. Tatham you will be so obliging as to present our Compliment to him

(Addressed) Mr. Wright Wennington Hall Lancashire."

Now, there is an air of genuine and simple kindness in taking an interest in this man's falling down from a scaffold. I cannot suspect Mrs. Cookson, wanting those waters of Buxton, in her state of illness, could tell Mr. Marsden to write something about the man who fell down, as it would be of some use in the year 1834.

The next letter is from Marsden to Wright, he says—

" DEAR SIR,—I receid. your Letter the 26th. I am glad that the Hay is all got in for the Weather at present is very unsettld. I am likewise glad that you are going to sell the Burton Estate I hope to have a good price for it.

Digitized by Google

Digitized by Google

Digitized by Google

I take it for granted that he had given an order for the sale of it, and Wright was to get a buyer. Then it says—

"those Estates of mine at a distance that remain unsold I care not how soon they are dispossd. of for they have been a perpettual plague to me & when I have got all my Estates more compact I shall be perfectly at ease."

Take this letter of the 26th of July, 1791, and I ask you in the name of common sense, could Mr. Marsden have written on any matter more naturally, when he says—"I care not how soon they are disposed of, for they have been a perpetual plague to me, and when I have got all my estates more compact I shall be perfectly at ease," &c.—

"My Aunt is much as usual I receid. a letter from Mr. Barrow wherein he mentions that Mr. Cawthorne and him will call upon us at Buxton this Week in their way to Lancaster he has given me some information with regard to that Business of Skirrows but nothing is done in compleating the Purchase he means to call again upon Mr. Greene before he leaves Town to finish that Business if he can. My Aunt propozes writing by him to you, our parties here are very gay Buxton is very full of Company and I spend my time very agreeably amongst the Ladies. I will be much obligd. to if you will send us some fruit if their is any left in the Garden or Bowling Green for here it is difficult to get good without giving a great price for it

My Aunt & Miss Tatham join with me in compts to you

I am Dear Sir yours Sincerely

Buxton 26th. July 1791 J. MARSDEN.

(Addressed)

Mr. Wright Wennington Hall Lancashire."

The next letter from Marsden to Wright is written when Marsden was still at Buxton. He says—

"DEAR SIR,—I receid. ycurs the 2d of Augst. I am very well Satisfd. to hear that you have let the Farm and the Melling & Wrayton Tithes so well."

The previous part of the correspondence here alluded to, we have not got. It has not been lost since the death of Mr. Marsden, but it was probably received, and as these letters were written at Buxton they were not kept with the same care as Marsden kept his letters at home. With the exception of one, all those we have are produced. He did make copies of some, but not of all, or if he did that at the time, they were lost; but it is evident that Wright was giving his advice as an honest and faithful steward, and treating Marsden as the owner of the property, and would insist upon his steward giving him an account. He goes on to say—

"I have not seen Mr. Barrow yet nor have I had any further account from him all that I can inform you of it was propozed at first that he and Mr. Cawthorne should call upon us at Buxton in their way to Lancaster very likely they have altered their mind since. I suppose by this time you have receid. my Aunt's Letter wherein she mentions the Coach Coming for the Sake of Airing out a little I show her yours this morning. And my Dear Sir my Aunt & Miss Tathams with Joint Compts. Yours sincerely J. MARSDEN

P S When you see Mr. Greene you will present my Compts. to him

Buxton 2d Augst. 1791

(Addressed)

Mr. Wright, Wennington Hall, Lancashire."

Digitized by Google

The next letter is dated Buxton, 3d August, 1791, from Mr. Marsden, addressed to "Mr. Wright, Wennington Hall, Lancashire." He says—

DEAR SIR,—I receid your Letter the 3d it gives me infinite pleasure to bear that the Park and Holmes are let to so much advantage. I hope you will have as good success with that Farm of Beckets My Aunt continues much as usual, I have nothing further to say and shall conclude with my Aunt and Miss Tathams joint compliments Yours sincerely

P. S: Complements to all friends. J. MARSDEN

Buxton 3d. Augst. 1791.

(Addressed to) Mr. Wright, Wennington Hall, Lancashire.

Then follows a letter, dated 21st August, 1791, to this effect—

"DEAR SIR,—I receid. your letter 12th. of August and as my Aunt is Writing by Jno to you for the Carriage to come directly she being very impatient for it I have just time to Write a few lines by him to let you Know I am glad that you have Lett Beckets Farm"

I know it will be said that Marsden never knew whether he had a farm or not; that he never knew any thing about his rents or any thing else. Now, gentlemen, before you come to that opinion, and before you form any judgment upon that subject, look at the letters. He says—"I hope you will have as good success with that of Becket's"—

"and I hope you will not be long detaind at Wennington she wishes very much to have it to ride out in here a few times as our Stay will be but Short. No tidings of Mr. Barrow yet

Miss Tathams desires her compliments

I am Dr. Sir Your sincerely

Buxton Augst. 21st. 1791 J MARSDEN

(Addressed to) Mr. Wright Wennington Hall Lancashire"

The next letter I shall read to you is from Mr. Wright, dated from Reid's Hotel, St. Martin's-lane, 24th March, 1792, addressed to John Marsden, Esq. It is in these words—(interrupted.)

GURNEY, B.—I think you had better delay reading that letter till the next occasion, as it is now time to adjourn.

Mr. POLLOCK.—If your lordship please.

GURNEY, B.—As I know from my experience the length of this cause, and the time it is likely to last on this occasion, and as I have been now sitting my twelfth day in this Court, I therefore propose to adjourn to Monday morning. I need not say to gentlemen of your description that you will neither speak to others nor suffer them to speak to you out of Court upon the subject of this investigation.

(Adjourned at 6, p. m. to Monday morning at nine o'Clock.)

SECOND DAY.

ATTORNEY GENERAL.—My Lord, Mr. Sharp is in such a state of health, that it will be impossible for him to give his evidence standing, so that he had better, with your Lordship's permission, occupy the officers seat near the jury.

GURNEY B.—Certainly, but perhaps he had better not be in court till he be to be examined.

ATTORNEY-GENERAL.—He was not here on Saturday, and

Digitized by Google

Digitized by Google

Digitized by Google

I do not know that he is here to day, but I believe he intended to come in expectation of being examined.

Gentlemen, I at once resume the statement I was making to you, of the documents I was laying before you, when I was interrupted on Saturday. Before I begin to read the letter of the 24th March, 1792, which comes next in rotation, I am anxious to call your attention generally, to the letters again, showing what they are. I had gone through the miscellaneous letters, or letters received by Marsden from a variety of persons, not less than eighteen or nineteen. And I am now in the course of reading the correspondence between Marsden and Wright, these parties were not often separated, so that such correspondence can neither be very long, nor very frequent; but in two instances it appears that Mr. Wright was in London, and Mr. Marsden was at Buxton, and thence that correspondence took place. I need not make any apology to his Lordship, nor to you, for stating these letters: no time will be lost by my so doing, as it will not be necessary to read them again; thus I trust it will be time saved, as they must be read, and read with attention and perspicuity,—I mean that they must be read in such a way as to be perfectly understood, and that the bearing and effect of them should be known. Such letters lose their effect, if they be read like a mere notice to quit, or a mere bill of exchange, or any long and tedious instrument. It is necessary that you should both hear them distinctly, and understand what they are, so as fully to appreciate the weight and importance that belongs to them.

Gentlemen, the next letter that I have to lay before you, is from Wright to Marsden. In it he says—

"Dear Sir,—The Lancaster Canal Bill has not yet been read a second time and whether it will to day or not is very uncertain as there has not been a House for this two days past; as soon as the Bill has been read, and I have got the close which is to be inserted I will send you a copy of it and another to Mr Parker of Machfield.—If there is any thing to make my attendance necessary you will please to let me know or should you want any thing doing in Town whilst I stay which you may have recolected you can mention it in your next. I saw Mr. Greene the other day and he said he believed Mr. Wildman would now accept the Title of Harterbeck & Barkin which was sold to Richard Skirrow."

It appears that Wright communicated to Marsden, that Greene had told him that Mr. Wildman would accept the title of certain property that had been sold to Richard Skirrow. And then he goes on to say—

"I will see Mr. Greene again and if possible to have that affair settled before I leave Town I will. He has not yet got the Fine assessed respecting the Hornby Estate but I expect it will be done soon Mr. Tatham desires his Compts. to you and all round the fire to whom you'l please to make mine

I am Dear Sir

Your most obliged and very Hble Servt.

G. WRIGHT

Reid's Hotel St. Martin's Lane 24th March 1792"

Henry Tatham was then in town with Wright, and according-

Digitized by Google

ly there is a postscript to this letter signed "H. T." which will be shewn in the hand-writing of Henry Tatham. It is in these words:

"Pray tell Robert not to neglect digging the Ground in the park for me I hope to be down in Time to sow the Seeds Yours affecty H. T."

That is a postscript by the admiral's brother to a letter addressed to Marsden, in 1792. Henry Tatham, being an inmate of the family, was intimately acquainted with the most secret and domestic details of that family, for a period of no less than seventeen years. A further postscript is added by Wright himself, thus—

"Pray be so good as send the inclosed from G WRIGHT
(Addressed) John Marsden Esq. Wennington Hall Lancaster."

The next letter is from Marsden, in answer to that which I have just read, and I believe we have here the original letter with the post mark upon it, and the perfect copy kept by Marsden. This answer is dated, "Wennington Hall, 25th March, 1792."

"DEAR SIR,—I recei'd your Letter the 24th. I am very glad to hear that the Lancaster Committee have agreed to every thing we wish'd and that they have behav'd Genteely upon the Business. I recei'd a Letter from Anthony Atkinson the last Week which I answered by Thursday's Post he wishes me to fix a day for the settlement of his Account I told him in my Letter that you was gone a Journey upon Business but as soon as you return'd I would fix a Day for you to go over to Lancaster and it should be Settl'd I have order'd Wm Lawson to Kill you some Trout tomorrow morning which shall be potted and sent with the dried Salmon along with some Woodcocks which I have ordered Guy and Smith to kill to-Morrow I will take care that they are carefully pack'd up in a Box and sent of on Thursday to Lancaster to be put into the heavy Coach directed to Mr. Barrows Chambers in the Temple, their is a Box of Woodcocks and a Hare which I sent of the last Week directed to you at Mr. Tatham's Southamton Street Strand"

That Mr. Tatham of Southampton Street, Strand, was a gentleman who was in the habit of receiving visits from all who came to town from Wennington Hall; they made it a place of reference, so that if they sent anything to town during the stay of some of the parties, it was generally directed there. Then he goes on to state—

"I hope you have recei'd it safe I shall direct to you as I have done before till I know where I must direct to you at. Mr. Lister left me yesterday my Compts. to Harry Tatham

I am Dear Sir Yours most Sincerely
J. MARSDEN.

P.S. The Ladies and the Captain desire their Compts. to Harry and you and wish you both success.

Wennington Hall 25 March 1792.

To Mr. Wright at Mr. Tathams Southamton Street Strand London"

That Mr. Lister here mentioned was the father of the present Mr. Lister Marsden. Then there is a postscript. "The ladies and the captain desire their compliments to Harry, and wish you both success."

The copy I perceive is only of the business part, omitting what relates to compliments or ceremony. All that relates to the fish, and the woodcocks, and the hare, is omitted in the copy.

Digitized by Google

Digitized by Google

Digitized by Google

SIR J. SCARLETT.—Is there not another letter annexed?

ATTORNEY-GENERAL.—All this correspondence has been for seven years scheduled to the answer, and the opposite party have had means of seeing every letter, even those letters which I now present to the jury, for the first time, have been all scheduled to the answer.—Nothing has been kept back, but they have got distributed, some having been put in one place, and some in another. But in consequence of recollecting that at that time they were all scheduled to the answer, for three years and a half they have had copies of all the letters with the exception of twenty or thirty, so that the other side have had the fullest means of investigating, collating, and mixing them, and, if I may so say, scanning the letters by the most minute comparison, so as to shake, if possible, the effect of them upon your minds.

The next letter is also from Marsden to Wright, dated Wennington Hall, 30th March, 1792, and has been put into the Lancaster post office, and is worthy of particular attention. It is addressed to Mr. Wright, at Reid's Hotel, St. Martin's Lane, London. That which was Reid's Hotel formerly, became afterwards what is called Slaughter's Coffee House.

SIR J. SCARLETT.—This letter is dated Wennington Hall, 30th March, 1792, but has the Settle post mark upon it.

ATTORNEY GENERAL.—I believe Hornby is not a post town, or if it be so now it was not so then. It was not so when we began this cause. This letter was put in at Lancaster, it says

"DEAR SIR—I recei'd yours the 26th."

(I believe we have not the letter to which this is an answer.)

"should have answer'd it sooner but the Captain and I went to Lancaster on Tuesday"

Who the Captain alluded to is, I do not know; nor whether it were Captain Tatham or not, but I should say not, because although he appears as Captain later, I rather think he was not at this time a captain in the navy: I cannot show who it was. He goes on to say—

"and did not return till Wednesday Evening in Kews Chaise between Seven and eight o clock I shall be very glad to hear you have got the Close am in hopes when that is done the Business will be finished as to any thing further relating to Business I can think of nothing particular that should make your attendance necessary but before you leave Town shall be much Oblig'd to you if you will think of the Tea for the Parlor and the Kitchen"

This was in the month of March, 1792, and Mrs. Cookson died in 1791, so that the care of the tea must have devolved on some other person, perhaps Miss Tatham, a relation of Admiral Tatham, and also of Marsden. Admiral Tatham had a brother there, so that he had a much nearer relation to him, Admiral Tatham, than she was to Marsden. Admiral Tatham married his cousin, I believe, and I wish you to keep in mind that Miss Tatham was a much nearer relation to the Admiral than she was to the family at Wennington Hall. She had lived there from

Digitized by Google

1780, when Marsden came to inherit the estate, and she lived there down till 1803, a period of no less than twenty-three years. The letter then goes on to say—

"and at the same time if you will bespeak me a New Hat of Mr. Setree for mine is grown very Shabby I am glad to hear from what Mr. Greene said to you that Mr. Wildman will now accept of the Title for Harterbeck and Barkin the Estate Sold to Richard Skirrow."

It may be that my friend is right, and that this is the answer to the other letter. It goes on—

"I mentioned to you in my Last Letter that I would take care the dried Salmon and the potted Fish you wish'd me to send you should be put into the Heavy Coach at Lancaster directed to Mr. Barrows Chambers in the Temple but I clearly forgot it and hope you will excuse it the Box went of on Wednesday Evening in Kews Chaise directed to you at Mr. Tatham's Southamton Street Strand with directions to Kew to see it Book'd and sent of in the Coach which I imagine is the Heavy one if it was that Coach it set out at nine yesterday morning, there is in the Box a dri'd Salmon a Woodcock and Three pots of Fish the Box is very well pack'd and I hope every thing in it will prove good, when it gets to Town You may tell my Cousin Harry Tatham that I have given Robert directions according to his desire to dig the ground in the park for the Sowing of the Seeds, which is begun of

I am Dear Sir with Compts. to Harry Tatham and the two Mr Barrows

Yours most sincerely

J MARSDEN

P.S. The Ladies and the Captain beg their best Compts. to Mr Tatham and you

Wennington Hall 30th March 1792

(Addressed to)

Mr. Wright at Reids Hotel St. Martins Lane London"

As to this matter, the same thing has occurred as in the case of the other; the copy has been made only of that part that is relative to business: a new hat, however, and the tea are mentioned. Then we have a letter from Wright to Marsden, at Anthony Lister's, Esq. Belle Hill, Giggleswick, dated "Hornby Castle, 9th January 1795," in these words—

"DEAR SIR,—I recd. yours and have sent the Chaise and likewise the Fiddle Case, I ordered the Chaise to come off from hear at 7 o'Clock in the morning that you might have an opertunity of being here to dinner if you wished.—The enclosed Letter is from Mr. Ferrand which you will please to send over by Tom to be put into the settle Post Office Mrs. Wright joins me in Compts to you and all the family wishing Mrs. L better Health

I remain yours Dear Sir most Sincerely

Hornby Castle 9th Jany. 1795 GEO: WRIGHT.

(Addressed)

John Marsden, Esqr. at A Listers Esqr. Bell Hill, Giggleswick."

I fancy this letter must be new, from finding copies of it: I will therefore hand it up to his lordship. Wright married in 1794, and this is a letter in 1795; and after that Mrs. Wright had become an inmate at Hornby Castle, and acted the part of housekeeper. I do not know how she and Miss Tatham divided between them the domestic offices that fall to women, but you will find both the one and the other frequently spoken of anon. Here is a letter which is written by Marsden to Wright, dated Belle Hill, 16th December, 1795, and addressed to Mr. Wright, Hornby Castle,

Digitized by Google

Digitized by Google

Digitized by Google

Lancashire. He says, "Dear Sir, I received your letter by Mr. Slinger on Saturday," so that it is plain at this time Marsden was residing with his relation Mr. Lister, at Belle Hill, and Wright was at Hornby Castle; and you will find that was the practice of the family for many, many years regularly; he went, accompanied by his servant, to spend some time with his relations, and they came back to visit him. He says—

"Dear Sir,—I received your letter by Mr. Slinger on Saturday and one inclosed from Mr. Hesketh."

I shall read that letter to you presently—

"I perused his letter over and you may let him know I approve very much of his plan I saw Mr. Croft the last Week he was upon a Visit to Mr. Parker at Marshfield. I told him I wish'd to have the Business settled, and desired he would fix a Day to come over to Hornby Castle. He said he could not determin, but would wait upon me in the Course of next Month. He mention'd he had seen Mr. Greene and they had had some conversation upon that Business I told him you was coming into Yorkshire and would very probably call upon him as you came through Gargrave, he wishes the Business was compleated Their are some people in settle who I understand are great Democrats, and David Swail I was told for a fact had been asserting it twice in public company that Government had hired the Assassin to Mourder the King"

You will understand from this, that the democrats had propagated a report that the assassin alluded to was hired by the government. Gentlemen, you will perhaps recollect that there was a report similar to that occurred within a few years ago, when it was reported that an attack was made upon an eminent person abroad, when it was found that the pistol was never loaded; but that the report was merely an attempt to work upon the minds of the people, and to affect a feeling of public loyalty; so, in this country it was formerly said that the government had hired an individual to make an attack upon the king, in order to create a feeling in the public mind in favour of the sovereign. Then he observes—

"Such men as him ought to be treated with the utmost contempt. Mrs. Lister continues much the same and her sperits are prety good at present Mr. and Mrs. L desire their Compliments to you Mrs. Wright and Miss Tatham, to whom you will please to present mine I am Dr Sir Yours Sincerely
J. MARSDEN."

Now this was Robert Hesketh's letter, which was sent to him, as I presume. The original letter we have not amongst the papers. It says—

"Sir,—In consequence of a conversation I lately had with the Overseer of the Poor for the Townships of Wennington, Wrayton, and Melling (which I understand are included in one Assessment) respecting the high price of Meal the last and the probability of its being as high this present Winter."

This letter is dated 1795, the original letter being addressed to John Marsden, Esq. Hornby Castle, Wennington Hall, 9th Dec. 1795. I have not the original cover which inclosed it, but this is the original letter which was inclosed. He goes on to state that—

Digitized by Google

"I am induced to wish that a Meeting of the Proprietors and Landholders might be held for the purpose of taking the above into consideration, and of adopting some plan by which there may be *retained* within the respective Townships a sufficient quantity of Meal to be sold to the Industrious poor at a sum under the Market price and as near Thirty shillings ℔ load as possible I should be much obliged to you for an early answer with your sentiments upon the propriety of such a Meeting.

I am Sir Yr. most obt. Servt.
ROBT. HESKETH."

Then the next is from Marsden to Wright, in which he expresses himself thus—

"DEAR SIR,—I shall be at Home on Saturday to Dinner and shall send Tom of to Day for the Black Horse If he is fit for a Journey Tom may bring him along with him to carry my Luggage. If not I must take a Chaise I have spent my time very agreeably and shall stay over the Assembly which is this Evening Mrs. Lister continues much the same

I am Dear Sir with Compliments of the Season to you Mrs. Wright and Miss Tatham, in which Mr. & Mrs. L & Anthoney join me in

Yours sincerely J MARSDEN

Belle Hill 14th. Jany 1796
(Addressed) Mr. Wright Hornby Castle"

Then here is another from Marsden to Wright—

"DEAR SIR,—I intended returning as to-Morrow had I not been under an Engagement to go to the Settle Assembly which is on Thursday Evening I shall be Home on Friday to Dinner, Mr. Slinger will return with me and stay all Night If any Business should fall out that it requires me to come sooner I will be much obliged to you if you will favor me with a Line. Mr. Croft called upon me & Mr. Lister on Saturday and Din'd with us Mr. L desires his Compliments to you & Mrs. Wright & Miss Tatham

I am with Compts. to the Ladies, Yours sincerely

Belle Hill 6 Novr. 1797 J MARSDEN.
(Addressed) Mr. Wright Hornby Castle Lancashire"

Gentlemen, the next letter is dated Belle Hill, the 30th Jan. 1800, from Marsden to Wright at Hornby Castle, Lancashire. There is a queer figure marked upon it, as if there had been paid twopence to send it by post. It says—

"DEAR SIR,—I called upon Mr. Slingger Yesterday and inquired after you & Mrs. Wright, he told me you were both very well."

(I suppose Slinger had gone towards Hornby)—

"I understand from him that you have expected me for some time, I was in in hopes of hearing from you, that if their was any Business that required my attention I would have return'd sooner. Anthony Lister has taken his Batchelor of Arts Degree."

Probably, gentlemen, you may know (as many of us know) that January is the time for taking degrees at Cambridge, and has been so for a century back. This has reference to Mr. Anthony Lister, the father of the young gentleman who sits behind me, who is the principal object of Mr. Marsden's bounty in his will. Then he goes on to state—

Digitized by Google

Digitized by Google

Digitized by Google

"He came this Evening when we had near done Supper & looks very well, he told me that Mr. Lushington was laid up in the Gout. I shall hire Proctors Chaise on Tuesday and shall be at Home at three o'Clock to Dinner. Mr. Listers desire their Compts. to you & the Ladies

I am Dear Sir with Compts. to Mrs. Wright & Miss Tathams

Yours Sincerely

J MARSDEN"

We have here a letter from Wright to Marsden, dated Hornby Castle, 28th June, 1801, to this effect—

"Hornby Castle 28th. June 1801

DEAR SIR,—I have sent you the Exchange Deeds which you will be so good as Execute in presents of Mr. Carr and let Tom come with them as soon as you possibly can as they will be wanted to exchange with Mr. Parker I have desired Mr. Thomas Carr would be so good as take them to his Fathers to night that he might make attested Copies of them—

I beg my Compts. to Mr. Lister and am Dear Sir Yours truly

GEO. WRIGHT

(Addressed) John Marsden Esq."

I cannot help here observing as to this letter, which sends a third person with deeds, which Marsden had executed; that Mr. Carr is dead, so that I cannot call him; but it refutes the notion which, upon a former occasion, my friend strove to impress upon the jury, that Wright kept Marsden completely shut up, so that nobody ever saw him, and that nobody was allowed to come near him, to execute a deed. According to his assertion, all men turned out when he executed a deed. Here it is clear that Carr was sent with deeds to be executed by Marsden, and here is Marsden's answer. It is dated Belle Hill, 29th June 1801—

"Belle Hill 29th June 1801.

DEAR SIR,—I was favoured with your Letter last Night by. Mr. Thos. Carr I have executed the Deeds and shall send Tom of with them Immediately Before I left Home I gave you a Receipt for £5. 5. 0 since I came to Giggleswick I recollect that I recd a Guinea of you the 22nd of last Month which makes it £6. 6. 0 shall be much oblig'd to you if you will alter the recept. as I forgot to mention it to you the Night I Sign'd it Mr. Lister has begun his Hay should the Weather prove favourable he expects to get it in the latter end of this Week I am glad to hear that the Gentlemen & you had an agreeable Assembly at Kirkby Lonsdale I understand a much better one then was expected. Mr. Listers desire their compliments to you & Mrs. Wright & the Family. I am with best respects to Mrs. Wright and Miss Tatham

Dear Sir

Yours sincerely

(addressed) J. MARSDEN.

Mr. Wright Hornby Castle."

Now here, gentlemen, is a letter, dated Hornby Castle, 1st July 1801, from Wright, addressed "John Marsden, Esq. Giggleswick." It says—

Hornby Castle, 1st July 1801

"DEAR SIR,—I was favoured with yours by Tom I would have sent him back yesterday but kept him that I might have an opertunity of informing you that Parker has executed the Deeds to you, he did not seem to relish this Business I stuck to him that he had no quarter till it was compleated which it now is, and I have got the Deeds

Digitized by Google

The Guinea you mentioned can be settled when you return the Ladies joins me in best respects to Mr. Listers I am Dear Sir

truly yours

GEO: WRIGHT."

The next are letters, to which I beg his Lordship's particular attention, and yours. The one is a letter from Wright to Marsden, dated Hornby Castle, 22d January, 1802, and the other is the answer from Marsden to Wright, dated the following day. The first is this—

"Hornby Castle 22nd Jany. 1802

DEAR SIR—Mr. Baldwin called upon me a few days ago requesting me to let him have some papers respecting Heysham Hall Estate I told him I could not part with any papers without your consent and that you had a claime upon that Estate to a considerable amount but I was sure you would treat with them upon liberal Terms and I promise him to write to you I must request your answer letting me know if I must treat with Mr. Baldwin on the best terms I can make or what way you would wish me to act Please to let me know by the post and I will then write to Mr. Baldwin upon the Business I am with Compts. to Mr. Lister

Yours Sincerely

GEO: WRIGHT."

Accordingly, gentlemen, there comes an answer by post, through Settle, which is 221 miles from town. It is to this effect—

"Bell Hill 23d Jany. 1802

Dear Sir,—I was favoured with your Letter by Mr. A Lister, wherein you mention Mr. Baldwin's calling upon you a few Days ago requesting you to let him have some papers respecting Heysham Hall Estate. Those papers my Brother gave to me some time before he Died and desir'd me not to part with them till Collonel Bayley or his Heirs delivered up mine.

(This Colonel Bailie was the gentleman who married his mother after the death of his father.)

I do not understand the Exchangeing of papers, and will leave it to you to Treat with Mr. Baldwin as you think proper Mr. Listers desire their Compts. to you & Mrs. Wright & Miss Tatham Mr L gives you Joy of your Little Girl I am with best respects to the Ladys

Dear Sir Yours Sincerely

J. MARSDEN.

(Addressed)

Mr. Wright Hornby Castle

Lancashire."

Gentlemen, is this the statement of a genuine fact? Is it true that the elder brother of Marsden gave him those papers sometime before he died, and desired him not to part with them "till Colonel Bailie, or his heirs, delivered up mine." That is his letter; and, if so, I think I may treat with contempt (and every body will treat with contempt) the insinuation, that Wright desired this letter to be written, for the purpose of being produced. That is too ridiculous; but, if so, what are we to collect from the fact, that the elder brother of this same Mr. Marsden was dead before it happened that these papers were put into his hands, with an injunction that he should not part with them, except under certain conditions? Is it, or is it not the fact? If it be the fact, then I say that of all the witnesses I have to present to you, there are none would have been so efficient as the elder brother of Mr. Marsden, but unfortunately

Digitized by Google

Digitized by Google

Digitized by Google

he died fifty-four years ago. It is an awkward thing to go back so long for other testimony; but, if we are compelled to do so, I submit that we have a piece of evidence which is perfectly decisive; for, let me ask you, do you believe the fact, which, no less than thirty-two years ago, Marsden stated in this letter to Wright, Wright being absent from the place where he (Marsden) was. The question is, did he, or did he not, write that letter, or are the contents true? Did his brother, some while before he died, put those papers into his hands? If he did, then the rubbish you will have as evidence will be swept from your view under the will; and yet you are to learn that Marsden was a fool, and an idiot, and worse than a child. Would the eldest brother have died intestate, and not have provided some guardian and protector of the estate —would he have put into the hands of that idiot these deeds, thirty-two years ago from the period alluded to? I must call your attention, gentlemen, to this emphatically; because, if this be true, my friend's case (let him support it by any number of witnesses he will) must be utterly false. The fact that the elder brother died intestate would speak volumes, unless he could prove that he was killed by a fall from his horse, or some sudden attack of nature, or by one of those accidents which fall the stronger from their being without any provision. It would be valueless to what it is, if, like Barrow, he died in crossing the river Eden. But he puts these deeds into the hands of a younger brother, who was to succeed him, with an injunction about them. It is an extraordinary case of testimony that the elder brother, who died fifty-four years ago, yields to the capacity of his younger brother, while left in the uncontrolled management of the estate, which came from their father.

Gentlemen, the next letter which I have to present to you is from Wright to Marsden, dated Hornby Castle, 30th January, 1803, addressed to John Marsden, Esq. Belle Hill, Giggleswick, in which he says—

"Hornby Castle, 30th Jany. 1803.

"DEAR SIR,—I was informed by Mr. A Lister that you meant to leave Giggleswick on the 9th of February."

In the letter I read to you on Saturday, about £500 being to be borrowed from Anthony Lister, he replied I will accommodate you in any thing, but I can only raise about £400 or £500. That letter was dated 28th October, 1802. Here is a letter of the 30th January, 1803, relative to that loan. There was a letter dated 23d October 1802, from Marsden to A. Lister, asking for a loan at Candlemas, which is on the 14th of February; and here is the original. Wright is writing to Marsden to say—

"If you could make it convenient to stop with Mr. Lister till the money, which you are to have from him, is ready you might bring it with you in the Chaise, you

Digitized by Google

will not be wanted here till the 17th or 18th of Feby and by bringing it with you it will save both a journey and expense, please to inform me by Thomas which way you mean to do

Pray remember me to Mr. Lister

I am Dear Sir
Yours truly
GEO: WRIGHT.

John Marsden Esqre. Bell Hill Giggleswick."

Now this is a new letter, and I beg to hand a copy of it to his lordship, and the other side. It sheds a light upon the other application of Marsden, in relation to his application for money, which he wanted against candlemas. The other gentleman having said, "I can only give you £500." Wright desires him to bring the money in a chaise to save the expense of the journey. Here is a copy of Marsden's answer, or the answer itself, I do not know which, dated Belle Hill, 31st January, 1803—

"Belle Hill 31st Jany. 1803

DEAR SIR—I was favoured with yours. It was my intention to have left Giggleswick on the 9th of Febry, as I thought probably I might be wanted at home. As my absence can be dispenced with till the 18th of Febry it will be no inconvenience to stop with Mr Lister till the money, which I am to have from him, is ready, which will be at Candlemas next. I will take care to bring it with me in the Chaise. As I shall have to execute the Bond for the money I will be oblig'd you if you will give me a line by the post how you would wish me to act in this business I am with best respects to the Ladys—

Dear Sir
Yours Sincerely
J. MARSDEN."

I remember my friend commenting upon this letter and making some figures upon the back of it. What value is to be attached to those figures, or any remark upon the back of it, you will judge by and bye. The next letter is from Marsden to Wright, dated August, 1803—

"Bell Hill 1st August 1803

DEAR SIR,—I shall leave Giggleswick on Wednesday next. Mr. A Lister is returned from Cambridge and accompanys me in the Chaise. We shall be at Home to Dinner a little before two o Clock. I wish you Joy of the Increase into your Family & was happy to hear from Mr. Lister that Mrs. Wright was Recovering. The Gentlemen desire their Compts to you and the Ladies I am with best respects to them

Dear Sir
Yours sincerely
J. MARSDEN.

(Addressed)
Mr Wright, Hornby Castle."

Here is a letter from Wright to Marsden, directed to him at Anthony Lister's, Esq. Giggleswick, and this is new from the circumstance of my finding copies. (Handing copies to his lordship and to the opposite counsel) it is dated Hornby Castle, 31st January, 1805—

"Hornby Castle 31st Jany 1805

"DEAR SIR—I received your note of the 28th Inst. and have sent you a Chaise according to your directions and I shall be glad to see you to-morrow as

Digitized by Google

Digitized by Google

Digitized by Google

there is some business which will require your attention the Ladies begs to be remembered to you & I will thank you to make my best respects to Mr. Lister and Anthy.

I am Dear Sir Yours most truly,

(Addressed) GEO: WRIGHT

John Marsden Esqre at Anthy. Listers Esqre Giggleswick."

Then here is a letter dated Hornby Castle, 10th January, 1809, from Wright, addressed to John Marsden, Esq. Belle Hill, Giggleswick, but which appears to have been put into the post at Settle, and afterwards at Kirkby Lonsdale, so that it came back to Hornby Castle, in which he says—

"Hornby Castle 10th Jany 1809.

DEAR SIR,—I received a Note from Mr Procter this morning saying that the Revd. John Tatham Rector of Tatham died yesterday in the afternoon about four o'Clock. There has nothing particular happened since you left us—We have experienced the most severe weather I ever remember for two or three days The family joins me in best respects to you and Mr. Lister I remain

(Addressed) Dear Sir most truly yours

John Marsden, Esqre GEO. WRIGHT

At A Listers Esqr Bell Hill, Giggleswick, Settle, Yorkshire."

You will find at that period that there was a presentation made by Marsden, in consequence of the event of the death of Mr. Tatham, to his relation Mr. Anthony Lister, who is the father of that young gentleman.

The next letter is dated Hornby Castle, 28th July, 1814, from George Wright to John Marsden, at the Rev. Anthony Lister's, Gargrave, Yorkshire, and is to this effect—

"Hornby Castle, 28th July 1814

MY DEAR SIR—I have this morning attended a meeting at Hornby, to fix a day to give a dinner to the Inhabitants of Hornby on the restoration of Peace. The expences will amount to about £30. I have to request you will inform me by Letter what part of that sum I am to give for you. I beg you will favor me with your answer so that I may receive it by Saturdays post. Please to make our joint respects to Mr. and Mrs. Lister

I am my dear Sir

Most truly Yours

"GEO WRIGHT"

Here is the answer to that letter, which went through the post office of Gargrave. It is dated Gargrave, 29th July, 1814. It says—

"Gargrave 29 July 1814

MY DEAR SIR—I was this moment favoured with yours wherein you mention that you attended a meeting at Hornby in order to fix upon a day to give a dinner to the Inhabitance of Hornby upon the restoration of peace. I shall feel myself happy in subscribing upon all Loyal occasions, and you may give £20 for me, which I will settle with you when I return. We shall drink Tea with you and Mrs. Wright on the 15th of next month—Mr and Mrs Lister desire their best respects to you and Mrs. W. I am with best respects to Mrs Wright and the family

My dear Sir yours most Truly,

(addressed) JOHN MARSDEN

George Wright Esqr Hornby Castle near Lancaster."

Digitized by Google

The next is a letter dated Heysham, 13th November, 1821. It is from Wright, addressed to John Marsden, at Thomas Branker's, Esq. 37, Rodney Street, Liverpool. It says—

"Heysham 13th Novr 1821

My Dear Sir—I was favoured with yours and was glad to hear that you had spent your time so agreeably.

I am about leaving Heysham as soon as ever I can and perhaps may be there either this week or the beginning of the next therefore you had best go forward to Hornby when you return, as your rooms and every thing will be ready for when you get there. Please to give our love to Thos. & Eliza. Mrs. Wright desires her respects to you I am

"My dear Sir Yours very truly

GEO: WRIGHT

Now, gentlemen, that ends the correspondence between Mr. Marsden and Mr. Wright, at different periods, from the earliest part of the year 1791, down to the last period in 1821. The next class of correspondence I beg to call your attention to is between Mr. Marsden and Mr. Croft. Mr. Croft was the tutor of Mr. Marsden; his education, as I stated on Saturday, had been a good deal neglected; he was put under the care of Mr. Croft as a private tutor, at Weybridge, in Surrey. Afterwards he gave Mr. Croft the living of Gargrave—No, Henry Marsden had given Croft the living of Gargrave. The great tithes of Gargrave are in Trinity College Cambridge—Mr. Marsden had taken a lease of the tithes, and he had let the great tithes to a person of the name of Lambert, precisely for the same sum at which he took them. Whether Mr. Croft could have got them himself or not, I know not. But you are aware of this, that if a clergyman has got the great and small tithes in his own hands, he has the means of making a more advantageous arrangement with his parishioners. Every one could point that out with a very slight knowledge of the subject, because the occupiers have no means of playing into one another's hands at all; but if you have bought it, you claim the corn as great tithes, and the hay in some places as a small tithe, (at least a vicarial tithe) and if you have both you make better terms. Marsden had made that arrangement for Croft's benefit, and this is the letter of Croft upon that subject, addressed to Mr. Marsden when residing at Heysham. There is no answer to this letter that I am aware of. The letter is dated as far back as the 21st of August, 1786. There is a copy for your lordship, and another for my friend on the opposite side (handing them in). That letter is in these words—

"Dear Sir,—Mr Bradshaw stopt me in my way to Heysham Mr. Stainbank being very particularly engaged on *Sunday* they desired me to do Duty for him which I could not under such circumstances well refuse I am sorry the weather proved so unfavourable I meant to have bathed this morning but its being so wet together with the powerful Inducement of a Turtle Feast to which I am invited and the Play of As You Like it in the Evening are irresistable I have

Digitized by Google

Digitized by Google

Digitized by Google

had your Mare taken very good care of and as you will hardly ride to day I will take Care either to bring or send her tomorrow Morning in good time

"I am much obliged to Mrs Cookson for dispatching Tom he came in time to save the Post and I trust our Business is now in a very favourable Train

With Compliments to Mrs Cookson I am Dear Sir

very sincerely Yours

Lancaster 21st. August 1786 H. CROFT.

"Miss Housman begs her Compliments Miss Wright continues much the same her illness it is apprehended will be tedious but not dangerous we hope

(Addressed) John Marsden Esq. Heysham."

The next is a letter from Mr. Croft, addressed to John Marsden, Esq. Wennington Hall, Ingleton, dated Gargrave, 20th December. It says :—

Gargrave 20th Decr.

"DEAR SIR,—I did not receive Mr Barrow's Letter till late on Tuesday I should have waited upon you immediately but have been confined to the House and under a Regiman for a bad Complaint in my Bowels, I hope a few days will make no material differance, tho' I assure you Sir I am exceedingly anxious to see you and hope from my soul that the Gargrave Business will turn out to our mutual satisfaction."

Gentlemen, you will find, that that was as to receiving the great tithes, and not being able to pay Marsden the rent for them, which he was bound to do. Then he concludes with saying—

"We have an artful people to deal with—but our Eyes respecting them have long been opened with my respectful Compliments to Mrs Cookson & Mr Wright if returned & Miss Tatham

I remain Dear Sir most respectfully yours

H. CROFT."

Here is a copy of a letter addressed to "John Marsden, Wennington Hall," on the back of it, which will entitle me to read it. It says—

"DEAR SIR,—I have just received a Letter from my Servant at Gargrave who tells me that they are very much distressed for want of a Horse to lead the Tithe Corn—if you could spare one of Your Work Horses a fortnight it would save a a great Expence and would make the Business easy to us—My Mare is not in a Condition or I would have done the best I could with her—the Foal is yet with her and I dare not use her—I am returning Home the latter end of this week and as I heard Mr Wright was going to Bradford I shall be very glad of his company if convenient or agreeable. My respectful complimts. to Mrs. Cookson

Lancaster 3d Octr 1787 I am Dear Sir ever yours sincerely

H. CROFT."

I am now to present to you a letter, which I believe was read the last time. It is dated "Gargrave, 20th Nov. 1788, addressed to John Marsden, Esq. Wennington Hall," and I will hand copies of it to his lordship and to counsel, (doing so) Gentlemen, it is thus expressed—

"DEAR SIR,—Inclosed I send You the Result of a Meeting of my parishioners. I cannot obtain better Terms, I would not finally agree till I had the Approbation of Sir John Scott. Every thing shall be done on my part to advantage a Successor and I wish to consider minutely Your Interest as much as my own. I have been long discouraged from further proceedings in Law, and no Advantage

Digitized by Google

if I may judge from former proceedings, could accrue to me in my life time besides that of living in perpetual anxiety and trouble—The Meeting to be held for the purpose of valueing the Estates throughout the Parish by which Valuation the future quotas are to be appointed will be on Monday the 8th of December printed notices are to be Issued and it is Expected it will be numerous and well attended. I think the Valuation may be of admirable use to you and will in a great measure ascertain what we so long wished for the Real Value of the Parish and particularly the Grazing Ground—I would not at present give any intimation of the advantage it might be of to you it might induce them to conceal—As I am very apprehensive that no advantage whatever can be derived from the Lease of the Great Tithes it would perhaps be prudent to offer them to the Parish at the meeting on the same terms they are taken—it is probable they will save themselves this Year, but they lost a great deal of money last year—it was indeed a very unfavourable Season—The Arrears to out of which the Money you were pleased to advance must be liquidated ought now to be called for and settled—

I have received something on that Score for which I am ready to give an Account—There are very considerable Sums due and which must be paid and I could wish it now no longer delayed—I would have waited upon You but am very much engaged in preparing my affairs for a final Arrangement. I know not how the Matter of Costs will be settled—I had a Letter from Sir John Scott on the Subject who thinks in Justice they ought to pay them—He says in his Letter he never meant to take any fees and that if in the hurry of Business any had at any time been received by his Clerk if Mr Greene will furnish an account of them they shall not be retained by him—

Please to make my respectful Complimts to Mrs Cookson & all under your Roof

I am Dear Sir

most respectfully yours

H CROFT."

Gentlemen, I shall not occupy you by commenting upon that statement. I think the date at the back of this letter, "20th November, 1788," is in Mr. Marsden's hand writing, so as to verify it as a statement of what is contained in the original letter: it is written—"I agree to the above proposal of Henry Croft." I have read to you the original letter, and I will hand up to his lordship a copy of that document, and to my friend another copy, that they may peruse it, and scrutinize it as they please.

Now, I have here a short letter from Marsden, without a date, addressed "Mr. Croft." It says—

"Sir,—I received your Letter and am sorry to hear you are so ill used. I think it was prudent in you to send for Mr. Barrow but it is to be hoped things in a little time will turn out to your satisfaction

I am Dear Sir

Your obedient humble servant

JOHN MARSDEN."

(Indorsed)
Copy of Letter to Mr. Croft.

There is no date to it, but it is evident it must have been written in Croft's life-time.

The next is a copy of a letter from Marsden to Croft, dated 1st January, 1789, in these words—

"Revd. Sir,—I received to day a Letter from Mr. Jowett of Trinity Hall Cambridge respecting the payment of the Rent for the Tithes of Gargrave which

Digitized by Google

Digitized by Google

Digitized by Google

I do assure you I was much surprized with, as the Tithes was taken for your *Benefit*. I expected you would have remitted the Rents regularly to the Rectors. Mr. Jowett says that there was due on the 22nd Novr. last £108 which is six quarterly payments I must request of you to remit that Sum to him without further delay.

I am Revd. Sir
Your very hble Servt.
J. M."

You will observe it is merely with initials. I believe that letter is new, and therefore I will hand copies to his lordship and the counsel.

Now I have a letter from Mr. Croft, addressed to J. Marsden, Esq. near Ingleton, with an endorsement by Marsden. It purports to have been written in 1789, but there is no other date to it than 1789. It says—

"Dear Sir,—I received your former Letter, but was not quite prepared to give you an Answer as there yet remains some Matters respecting the Great Tithes to be got in and settled which I hope will now be accomplished very soon. It is a Matter of total Indifference to me to whom I account and therefore will meet Mr. Wright any where or at any time for that purpose. What you took *for my Benefit* I doubt not but you are too true and sincere a friend to wish me to suffer by—but be that as it will—I know the worst

I am, Dear Sir respectfully Yours
H. CROFT.

My Complimts to Mrs. Cookson, &c."

Here is another letter from Marsden to Mr. Croft, dated 24th Feb. 1789, which, from its contents, gives us nearly the dates of the other three. He says—

Revd. Sir,—I writ to you some time since requesting you to Pay the Rent that was due to the Rectors of Gargrave, am very much surprised that I never recei'd an Answer. Am in great hopes that you have settled that matter otherwise if it is not done I must tell you once for all that I insist upon its being paid or else you must Settle the full Accompt with me respecting the Tithes & Profits along with the outgoings.

I am Revd. Sir
your obt. Hble. Servt.
JNO. MARSDEN

Wennington Hall 24th Feby 1789
(endorsed) Copy of a Letter
to Mr Croft"

Then there is a letter from Henry Croft to Marsden, without any date. It states—

"Dear Sir,—On my return Home last week I found the inclosed Letter laying at Gargrave I send it by the first Opportunity.

"I wish much to pay my personal Respects to You and to join in the general wish of the Season I doubt not there is at Wennington Hall a warm fireside and as usual a very hospitable table.

I am Dr. Sir with my respectful Complimts. to Mrs. Cookson &c. &c.

Most respectfully yours
H CROFT.

Gargrave Sunday Eveg.
(Addressed)
John Marsden Esqre.
Wenninington Hall near Ingleton."

Digitized by Google

This has the Gargrave post-mark upon it, and the words "Sunday Evening." It probably was about the same time as the others.

The next letter is from Croft to Marsden, dated Gargrave, 3d July, 1802. It says—

"DEAR SIR.—I have been very much afflicted with the Rheumatism: so much so that I can hardly bear to take any exercise—I received Your Letter and should most willingly act in conformity with any thing You wish—A friend of mine who is going to Buxton—has offered me a Conveyance gratis—which I cannot help accepting as I can but ill afford it out of my own pocket—Besides I have a particular engagement in the South which may prove of much importance to me and which I am under a necessity of paying regard to—Mr Cawthorne has my good wishes and altho' I cannot possibly appear in person on his Behalf—I shall not Appear to oppose him—I have had powerful Solicitations from his opponents—but in this and most instances, (whatever may have happened) I shall always wish to manifest great respect to Mr Marsden and as far as I am able convince him that I am very faithfully,

his respectful humble Servant
H CROFT

(Addressed to) John Marsden Esq Hornby Castle near Lancaster"

It is not uncommon, as you find in this letter, to introduce the third person, although you address the individual himself. Then there is a postscript in these words—

"P. S Should matters come to a Critical point send to Gargrave* and I will use my utmost efforts to attend you.

*My housekeeper will know where to direct to me"

That Mr. Marsden took much interest in the Lancaster election, and in politics, you will perhaps have collected from some of the letters already read; but here is a letter addressed by Mr. Croft to Mr. Marsden in 1802; and I do not recollect whether there was a general election in that year or not.

GURNEY, B.—There was a general election in July, I think.

ATTORNEY GENERAL.—The earliest that I recollect was in 1806, upon the death of Mr. Pitt; but I collect from this that Marsden had applied to Croft to vote for Cawthorne; for he says, "Mr. Cawthorne has my good wishes, and although I cannot possibly appear in person on his behalf, I shall not appear to oppose him." As he goes on, his sentiments seem to relax in favour of his old pupil, although Marsden had pressed him on the subject of his tithes. He concludes with saying "but in this and in most instances, (whatever may have happened) I shall always wish to manifest great respect to Mr. Marsden." It is there he introduces Marsden's name with stiffness or dignity in the third person, and ends with saying—"and as far as I am able, convince him that I am very faithfully his respectful humble servant, H. Croft;" and his postscript implies, if they wanted him at a pinch he would use his best efforts to attend.

Gentlemen, there ends the class of letters which passed between Marsden and Croft—that last letter is written so exactly in the style of a person, who had been pressed to give a vote by an old friend, with whom there was a degree of stiffness; and if any one understood Marsden as a person to be used as a member of

Digitized by Google

Digitized by Google

Digitized by Google

society, it must have been his own tutor who had had him under his care at Weybridge, in Surrey, for the purpose of improving his understanding, his education having been neglected, although he had relations about him.

The next head of correspondence which I beg now to introduce to your notice, is that which passed between Marsden and a gentleman of the name of Dawson, who is now dead. Now gentlemen, I do not mean to carry you through all this correspondence with precisely the same minuteness as I have done some of the former correspondence, but I shall call your attention to what it is—and for that purpose, I must read to you one or two of the earlier letters. Mr. Dawson was a relation of Marsden's, and he was the father of a large family. I believe the sons of the family were brought up (at least all but one) to various professions—one was a barrister—another a clergyman—another was in the army, and the other takes the estate of the family. Mr. Dawson himself was at Hornby, and visited at the castle frequently as a relation. Mr. Dawson sent in succession three different members of his family to go down there upon a visit, who were received upon the footing of near relations, and became exceedingly intimate with the family, insomuch that they were occasionally coming down there as they pleased, partaking of the amusements of shooting and fishing; of course they were in the habit of dining at the table and seeing as much of Marsden as they thought proper, or when absent, to raise a correspondence. At the trial at York one of Mr. Dawson's sons was present, as a matter of course, and perhaps my learned friend will say, "well, why do not you call some of them?" I will tell you why I do not The Admiral has no children—none whatever, so that his nearest relations are these Dawson's, who certainly have no chance of getting the estate, unless your verdict first gives it to Admiral Tatham; but they have a good chance of getting it in that way if it ever be to be got at all—and therefore it is not likely, and as all of you know (if you know any thing at all of the business of a court of justice) no man in his senses would even call his own brother or servant, unless that brother or servant would submit to be examined by an attorney, if the person alluded to only say, "I will speak the truth when I come into the witness box," when thus questioned, "tell us what you are to say in the box." Such has been the case in this instance. Mr. Frederick Dawson who is now between thirty and forty years of age, was at York, assisting Admiral Tatham in conducting the defence, and I submit that that is a good and sufficient reason why I did not call him; my friend shall have, however, all the benefit of that; but I should be glad to know why we should bring any of them forward on our side? My friend should bring them, if they are to be called at all; they have already espoused Admiral Tatham's cause: but, whatever testimony they may have to give,

Digitized by Google

their acts would contradict what they said. Gentlemen, with these observations I shall endeavour to read, as shortly as possible, some portions of this correspondence, so as to give you an idea what it is. It is material in this way—Mr. Dawson was a gentleman of fortune and education—of the best and most correct feeling, apparently. Mr. Dawson had personally known Mr. Marsden; he had sent his children there; or at least three or four of his family had visited him at the house, in the capacity of being relatives to Mr. Marsden. When I say "children" I mean the large phrase, or I may say, the legal expression which applies to a child of the age of twenty years or so; but in this instance, they were all grown to man's estate, and had the fullest means of knowing and judging of the capacity of Marsden; but you shall read and judge how it is that Mr. Dawson writes to Mr. Marsden, and sends his children there. Now this correspondence is also important in this way—I have already detailed to you Marsden's correspondence in so far as it wanders about from 1788 to 1791 and 1792—and also his correspondence with others, down to 1797, when Admiral Tatham wrote those two notes on his brother's death; and I have gone on to the further correspondence with Mr. Croft. This correspondence, which I am now about to enter upon, commences in the year 1811.

The first letter I shall state in the correspondence between Dawson and Marsden is one from Mr. Dawson to Mr. Marsden, dated St. Leonard's Hill, Windsor Forest, November 14th, 1811, He commences it by saying—

"Dear Sir.—You will be surprized at receiving a line from me"

That he was a relation there can be no doubt; but whether there were any anterior correspondence or not I do not know, for you will find that this letter shows distinctly he must have been there before that time, and even that he was visiting Marsden as a relation. He goes on to say:—

"but I cannot resist communicating to you as well as to my other friends an event that is soon likely to take place in my family. My second Daughter Harriot is going to be married to Mr. Charles Shard the only Son of a Gentleman of the first respectability in this neighbourhood and of considerable fortune—This union affords every prospect of happiness and is every way satisfactory to all the connections. I hope you have had your health since I had the pleasure of dining with you—I wished to make an excursion into Craven this year with my oldest Son but could not accomplish it. Should any occurrence bring you to London I should be happy to shew you the improvements I have been making at my residence here under the directions of Mr. James Wyatt who has planned me a Hall that is universally admired in the Gothic Style and quite adapted to your beautiful situation. I beg my Compts. to Mr. Wright, and remain

Dear Sir
your faithful & affecte. hble Servt.
WM. DAWSON.

My Town residence is No. 10 Hindo Street Manchester Square where I expect to be by the time this arrives

Addressed to Wm. Marsden Esqre.
Hornby Castle, Lancaster"

Digitized by Google

Digitized by Google

Digitized by Google

Of Mr. Marsden's answer to this letter I have here a copy; he writes him thus:—

"Hornby Castle 30th. Decr. 1811.

DEAR SIR,—I was favored with your very obliging letter of the 14th. Novr. and since that time I have read an account of the marriage of your Daughter having taken place. I most heartily congratulate you and your family upon it, and hope it will be a long source of happiness to you all. I feel myself much obliged to you for your kind enquiry after my health which has been very good since I had the pleasure of seeing you here. Should either business or pleasure bring me to London I will do myself the honor of paying my respects to you. If either you or any of your family should visit Craven the next year, I shall be happy to see you or them at Hornby Castle when I hope to show you a litte improvement. Should you favor me with another Letter you will oblige me by informing me how many Children you have and their names. Mr. Wright begs his Compliments to you

I remain

Dear Sir

Your faithful and affecte. hble Servant

JOHN MARSDEN.

Copy of a Letter
To Wm. Dawson Esqr
Hinde Street
Manchester Square
London"

The next letter is from Dawson to Marsden, dated "Bath, 14th January, 1812." This correspondonce is not long, and perhaps it would be more convenient, as it is not long, and must be read at some time or other, that I should occupy some little more time in reading it once for all; upon that, however, I will take his lordship's pleasure, or study my friend's convenience.

GURNEY B.—Perhaps if we were to hear it at once, it would save time.

ATTORNEY-GENERAL.—I do not wish, gentlemen, to spare my own labour, but to save time by reading these letters, which you must hear read some time or other during the course of the cause, and, if approved of, that you should hear them once for all distinctly read, I shall undergo the labour. I believe this is extra evidence. On the first letter there is no endorsement, it is in these words:—

"Bath 14th. Janry. 1812

DEAR SIR,—Since the receipt of your very kind Letter I have been suddenly summoned to Bath to perform the last melancholy duties to my revered and honored mother, who died the ninth inst. about half past nine at night in her 85th year—Her remains are to be deposited near my Father's in the Cloysters of Windsor Cathedral As—soon as circumstances can admit of my departure hence I shall most gladly rejoin my family and when my mind is less painfully occupied I shall have great pleasure in making the communication you require being very sincerely and truly—

Your affectionate hble Servt.

WM. DAWSON

John Marsden Esqre Hornby Castle Lancaster"

The next letter is also from Dawson to Marsden, dated St. Leonard's Hill, Windsor Forest, 31st. Jan. 1812. It was enclosed in a frank of Lord Burghersh's, and it says:—

"MY DEAR SIR,—I inclose a ring in remembrance of my dear Mother whose interment took place at Windsor in compliance with her own desire. It is a comfort to me to reflect that every thing has been done exactly as she requested. You were so kind as to express a wish to know about my family and have thereby imposed a task upon yourself of reading through a longer list than you are probably prepared for having three Sons and five Daughters as follows,

Digitized by Google

Sophia — Caroline Matilda
Harriet Sarah married to Mr. Chas. Shard — Charlotte Anne
William — Matilda Frances
Henry — Frederick

My Eldest Son is at St. Johns College Cambridge
My second at Oriel College Oxford
My third at Eton and next year goes to Oxford

I am happy to add they are all well disposed promising youths—Henry is intended for the Church and Frederick for the Law. My eldest Daughter who is a very pretty poetess is about 23 and my Youngest Daughter is four years old so we have all ages. I shall be happy to shew them all to you if you should be induced to make an excursion into the South which I should certainly to the North if I had as few incumbrances as yourself. I beg my Compts to Mr. Wright. Mrs. Dawson unites with me in regards—

I remain Dear Sir Yours affectionately

WM. DAWSON

St Leonards Hill Windsor Forest 31st. Jany. 1812

We shall remove to our Winter Quarters Hinde Street Manchester Square in about ten days I hope you had nothing to do with Boldero directly or indirectly I have—I waited for a Frank.

(Addressed to) London February eight 1812
Burghersh J Marsden Esqre. Hornby Castle Lancaster"

Now, here is Marsden's answer, dated Hornby Castle, 3rd. March, 1812; he says:—

"My Dear Sir—I was favoured with your letters and am obliged to you for your kind remembrance of a ring enclosed but am sorry for the melancholy event which occasioned it but it was a debt we all must pay either sooner or later and it is a pleasant reflection to us to know that every thing was done that could be for our departed friends—It gave me great satisfaction to read the account of your fine family but still more so to hear from you they were all so well disposed I hope they and you will long live to enjoy each others Society and it must be an additional satisfaction to you to see them improving every day. I have not taken much pleasure of late in travelling from Home but should I ever make another excursion to the South I shall be happy in paying my respects to you I have the pleasure to inform you that I have nothing to do with any Bankers whatever all the property I am possessed of are in Land and any Cash that I have to spare I lay out in improving it so that keeps me from having any money for the Bankers I am sorry to hear that you have any thing to do with Boldero I hope it is to no large amount—I should have acknowledged the receipt of yours sooner but have had an inflamation in one of my Eyes which has prevented me from writing for some time—I am with best regards to Mrs. Dawson & your family

My Dear Sir Yours affectionately

Hornby Castle 3d March 1812 JOHN MARSDEN
P. S. Mr. Wright begs his Compliments"
Copy of a letter to Wm. Dawson Esq Hinde Street Manchester Square London

The next is a letter from Dawson to Marsden, written in Nov. 1812 (franked by Disbrow, who was a colonel in the army), in which he says:—

"Dear Sir,—I trust that you will excuse the trouble I am going to give you: but I have got into a dilemma respecting a Chimney piece which I ordered of Mr. Francis Webster (who has Marble Works at Kendal) some Months ago and can obtain no answer to my Letters—I have had One handsome black Marble Gothic Chimney piece from Him for which I paid Him £48. Another he engaged to make according to a Drawing he sent to me for a Bed Room of small expense but it has never arrived and the Room in consequence remains in an unfinished state. Should Mr. Wright have occasion to send over to Kendall upon your business or his own, I shall be obliged to Him to make enquirey for me whenever it may be convenient

"I hope you have continued quite well since I had last the pleasure of hearing from you. I know of no events to communicate, except that the King continues in

Digitized by Google

Digitized by Google

Digitized by Google

the same state in which he has been in for so long a time, and that his general health is unimpaired. Mrs. Dawson unites in every good wish with

Dear Sir Your affectionate Cousin

WM. DAWSON.

St. Leonards Hill Windsor Forest
4th Nov. 1812.
Windsor November five 1812
John Marsden Esqr. Hornby Castle Lancashire
Free E. Disbrow."

The allusion here made to the state of the king, was during the regent's government, and that was in the very year in which Perceval was shot, and there was reason to fear the demise of the crown earlier than it took place.

The answer by Marsden to that letter is this:—

"Hornby Castle 8th Feby. 1813

DEAR SIR,—I was duly favoured with yours of the 4th Novr., and was very anxious to have answered it sooner if I could have given you a satisfactory account respecting the Chimney piece. Mr. Wright wrote to Mr. Webster the day after I received yours, desiring he would inform me when it would be ready, or whether he intended sending you one or not, to that Letter he Recd. no answer; he sent again by a friend of his above seven weeks since who was going to Kendal, and gave him the Copy of his Letter to Webster with him, and desired he would ask him if he had received one, which he acknowledged he had, and promised the Chimney piece should be ready in less than three weeks. I have heard nothing from him since. If you have not received it, and wish particularly to have one of the sort you mentioned, let me hear from you soon, and I will send a Man over and get a person there to see it finished. I beg my best regards to Mrs. Dawson and your family. I am,

Dear Sir Your affectionate Cousin

Indorsed JOHN MARSDEN—
Copy of a Letter to Wm. Dawson Esqr.
St. Leonard's Hill, near Windsor"

The next is a letter from Mr. Dawson to Marsden, dated 22nd. March 1810, in these words—

"MY DEAR SIR,—I have many thanks to return to Yourself and Mr. Wright for your very kind attention to my request."

(Reading interrupted)—

SIR J. SCARLETT.—As you do not propose to have these letters read again, I beg to call his lordship's attention to that last letter (handing up a copy of it to his lordship), perhaps your lordship will keep that letter the nearest to you, and I will make no comment upon it at present, but call attention to it afterwards.

GURNEY, B.—There is an error at the beginning of it, is it that you allude to?

SIR J. SCARLETT.—No my lord, it is not that; but look at the second paragraph in the letter.

The Attorney-General looked at it, and then continued the reading of the subsequent letter—

"In having taken so much trouble relative to the Chimney Piece I had ordered so long ago of Webster of Kendal of whom I neither have nor do expect to hear from again and have therefore given my orders elsewhere His having kept me in unnecessary suspence can do him no service and I imagine he has so much business at Home that he disregards a distant Customer—We were going to remove from the country at the time I had the pleasure of receiving your letter I therefore thought that I could defer writing until we were fixed in Town where we have now

Digitized by Google

been about a fortnight—The favourable turn of affairs upon the continent affords cause for exultation"

That was in the month of March, 1813, a period whereof the public events must be fresh in your recollection, and every body will rejoice at the successful change which there took place in the war, when the armies of Russia were pussing Buonaparte back to France, and when the sort of coalition he had established was breaking up, that is what is here alluded to, when he says—

"and makes one entertain the hope that one may yet live to see a Peace but the expectation of such a joyful event as well as all others are at present absorbed in the contemplation of the extraordinary depositions as detailed in the Newspapers relative to the Princess of Wales of which you are just as well informed as we are hear—As a matter of policy it had been well had the subject never met the public Eye—I wish I foresaw a probability of our meeting once more you have no motive for quitting your comfortable Home—I have too many cares to leave behind me to wander abroad yet I do wish if I could accomplish it to visit Craven once again Should Mr. Wright be called up to Town by any business I shall hope to see him or should you want any thing from hence let me know and I will execute your Commission with much pleasure—Mrs. Dawson and my family unite in sincere regards with

Dear Sir Your affectionate Cousin
WM DAWSON

10 Hinde Street Manchester Square 22 March 1813.
I beg my compliments to Mr. Wright—
London March twenty three 1813
John Marsden Esqr Hornby Castle Lancaster"

Free J. H. Broadhead

Then the correspondence ceases for some time it goes on again from the 4th of March, 1814, making an interval of nearly a whole year. Here is a letter of that date from Dawson to Marsden, in which he says—

"DEAR SIR—So long a time has now elapsed since I had the pleasure of hearing from you that I write a few lines wishing to know how you do. I trust you have escaped all illness from this uncommon severe Winter, which is more than I have done, as in consequence of exposing myself too much to the Cold, I have now been confined nearly six Weeks to my Room"

Perhaps, Gentlemen, you may remember that in the Christmas of 1813, the River Thames was actually frozen over; it was one of the severest winters we ever remember.

GURNEY, B.—I have not got that letter.

ATTORNEY-GENERAL.—I will hand your Lordship a copy of it. (Handing it.) He then goes on to say—

"without any immediate prospect of regaining my liberty. It occasioned a suppression of Urine, and I found it necessary to have a Surgeon from Town Sir E. Home, in addition to the assistance that was to be had at Windsor. I am informed that nothing will forward my recovery so much as warm and mild weather of which a continuance is not to be expepted at this early season of the year—I have the satisfaction in all the rest of my house being in perfect health. My Eldest Son is going into the North York Militia, in which he has got a Company under Lord Dundas. The Regiment is now stationed at Armagh in Ireland. From the present state of affairs on the continent, there is a reasonable hope, that Peace may once more take place, althoug the Allies appear lately to have made but little progress, but those who are best able to give an opinion on so weighty a subjebt are of opinion that they must ultimately succeed over Bonaparte, notwithstanding his present Efforts. I sincerely trust it will prove so. Mrs. Dawson unites in best wishes with

My dear Sir Your affecte. hble Servt.
WM. DAWSON.

St. Leonards Hill
Windsor, March 4th, 1814."

Digitized by Google

Digitized by Google

Digitized by Google

Your Lordship, I think, had a copy of that.

GURNEY, B.—No, I had only the answer to it.

ATTORNEY-GENERAL.—Then the answer to it is this—

"DEAR SIR,—I was favoured with yours of the fourth instant and am very sorry to find from it that you are so much indisposed as to have been so long confined to your room. The weather is now becoming more mild and I hope it will enable you to take gentle exercise and by that means will restore you to your usual health again which will give me infinite pleasure to hear I feel myself much obliged by your kind attention to me, and I have the pleasure to inform you that I never enjoyed a better state of health than I have done this Winter. The weather has not been so Severe here as in other parts of the Kingdom. we have had very little snow, and although a good deal of frost, it has been rather pleasant than otherwise there has scarce been a day that I have not been out. I shall be glad to hear that your Son likes the life of a Soldier, it is a good School for a young man by all appearances at present, we are likely to have less occasion for them then we have had. The Tyrant of the Continent must be overcome at last and then I expect we shall have a permanent and lasting peace. Should you or any of your family take an Excursion into the north this Summer I shall be glad to see them at Hornby Castle. I am with best respects to Mrs. Dawson, Dear Sir your affecte. hble Servt.

JOHN MARSDEN.

Hornby Castle, March 22d 1814.

P.S.—Mr Lister of Giggleswick Died on Sunday the 13th inst."

That gives the date of the death of Anthony Lister's father, who was also grandfather of the young gentleman who is now in Court.

The next letter is from Dawson to Marsden, dated 20th Sept. 1816, in which he says—

"MY DEAR SIR,—My Son is going into Craven and will probably pass near you—I have therefore desired him to call and enquire after your health and hope to receive a favourable report—I am not myself equal to the undertaking of so long a journey or should otherwise have accompanied Him.

Mrs. Dawson unites in best regards with

Dear Sir Your affecte. hble Servt.

St Leonards Hill 20th Septr. 1816 WM DAWSON.

(Addressed to)

John Marsden Esqre. Hornby Castle"

There is another letter from Dawson to Marsden, dated 1st January 1817, and we have found none intervening. This is a sort of introduction to the visit of the son. It is this—

"St. Leonards Hill, Jan. 1st, 1817.

MY DEAR SIR,—I have long intended myself the pleasure of writing you a few lines to thank you for your attention to my Son William when he visited Craven. He was much gratified with his excursion and with your kind reception of him and by his account you have added many improvements to Hornby Castle (since I had the pleasure of paying you a flying visit) of which I sincerely wish you many years enjoyment. My Son is now upon the Continent and at present I believe at St. Omers with the intention of acquiring some knowledge of the french language before he proceeds to Paris. My Son Henry who continually reminds me of my Father from the placidity and extreme mildness of his disposition has got the Curacy of New Romney where he is very much liked, and the Marshes being now well drained the Idea of unhealthiness is no longer entertained by those acquainted with that Coast. My son Frederick has just taken his degree and is entered at the Middle Temple where I have procured him Airy apartments and where he will reside in the course of a fortnight under promising

Digitized by Google

Auspices, as Persons of great practice and respectability have expressed their intention of calling upon him as soon as he takes possession This is very gratifying to me being now arrived at an Age to consider the advancement of my Children as the most important object that I can possibly have in view in this life."

Having mentioned the prospect of his son's advancement, he then proceeds—

"I little thought when I dined with you that I should outlive our Cousin Pudsey and now I have lately received a letter as most probably you may have done of the death of young P. Dawsons Wife aged 29 He must have had much upon his mind at the time he offered some of his property for Sale for she was dangerously ill at that time and he must have been in a state of continual Anxiety.—The Plant my son brought is in the ground and likely to thrive the Beans I have still by me and shall sow at a proper time. My gardener says they are the sort which are brought over in the Indian Ships to feed the Guinea Pigs. My Girls have thought of stringing them into Baskets.—I am obliged to Mr. Wright for thinking of Chimney pieces for me but have fortunately done with Building and shall have no occasion to trouble him.—By this time I think I must have tired you and shall therefore only add the united regards of Mrs. Dawson and myself and that

I remain sincerely and affecty. yours

WM. DAWSON."

Then there is a postscript in these words—

"At this season I do not go from Home, and a Journey to Town is now an important event But my family of course do and Mrs. D and my Eldest Daughter are invited to Mrs. Egertons on the Castle Hill on the 6th to meet her Majesty.

(Addressed to) John Marsden Esqre."

The answer to that is this—

"Hornby Castle March 1st. 1817

My Dear Sir,—I was favoured with your obliging letter of the 1st of January and should have been happy to have seen you along with your Son to have spent a few Weeks with me provided you had been able to have accomplished the Journey—I was sorry Mr. Willm. Dawson made so short a visit; I was much pleased with him and should have been happy if he could have spent a longer time with me: I hope he will have a pleasant tour upon the Continent It gives me infinite pleasure to hear that your other Sons are likely to be settled to your satisfaction—I sincerely hope your Children will long be a comfort to you. I have been building a Chapel in the Gothic style which will be a handsome structure when it is finished and I expect to have it ready for doing duty in it soon.—The late Mr. Dawson I heard Dyed rather suddenly. I received no letter from any part of that Family either on his death or Mrs. Pudsey Dawsons, but saw an account of it in the newspaper I am with best regards to Mrs. Dawson

My dear Sir Yours most affectionately

Copy of a Letter to JOHN MARSDEN

Willm. Dawson Esq."

The next is this letter from Dawson to Marsden—

"London 26th. June 1818

My Dear Sir,—I have long wished to write to you to enquire after your health but waited for an event to write about and now one has occurred which gives us all so much pleasure that I am anxious to impart to you that you are going to have a new Cousin. My second Son Henry who is in the Church is shortly to be married to Miss Buxton Daughter of Sir Robt. Buxton of Shadwell in Norfolk a very ancient family in that County. Sir Robt. has only two Daughters one already married and a Son who is in Parliament and franks this Miss Buxton is a very sensible amiable young woman and the families have been so long acquainted that it makes it particularly agreeable to us. I am sure your

Digitized by Google

Digitized by Google

Digitized by Google

kind disposition will rejoice in our falicity—The Marriage I think will take place about the Middle of next Month Mrs. Dawson gives a Ball on the 30th. instant on the occasion which probably you may see something of in the papers. I hope you passed through the Winter pleasantly. The Cold annoyed me as usual and confined me to the House many Weeks—I suppose you continue stedfast in yonr determination not to move from Home where I remain because I cannot travel or I should certainly visit Craven It is possible in the Autumn I may send my third Son Frederick on an excursion into your Country in which case he will have the pleasure of introducing himself to you. I shall be glad to see Mr. Wright if he should come up to Town to whom pray remember me—Mrs. Dawson and my family unite in best wishes to yourself with

my Dear Sir Your affectionate Cousin

Manchester Square WM DAWSON.

My Eldest Son Wm. was on his way to Lyons when I last heard from him and from thence will probably visit Switzerland

London June twenty sixth 1818

Jno Marsden Esqre Hornby Castle Lancaster

(Free) John J Buxton"

Here is another letter from Dawson to Marsden—

" St. Leonards Hill Septr. 21st. 1818

My Dear Sir,—The Bearer my third Son Frederick has been to Settle upon my account being unable to Travel so far myself and I charged him to introduce Himself to you and to bring me an account how you were on his return I hear you have been by the Sea side I hope for pleasure not for Health. My letter acquainting you with my Sons Marriage I conclude you received.

Believe me my Dear Sir

most affectionately yours

WM. DAWSON.

(Addressed to) John Marsden Esqre."

I presume from that he did not answer the letter alluded to. We find no answer among Mr. Marsden's papers; but here is a letter in November, 1818, from Marsden to Dawson, and probably it was the answer intended. It is this—

" Hornby Castle Novr. 21st, ~~18th~~ 1818

My Dear Sir,—I was favoured with your obliging letter of the 20th. June and feel myself hurt that it should remain so long unanswered. I have been at the Sea side for some time for the benefit of my health which was occasioned by a violent inflamation in my Eyes; and did not return till the last Week or would have wrote sooner. I read the Account in the Newspaper of Mr. Henry Dawsons Marriage with Miss Buxton and have the pleasure of congratulating you and Mrs. Dawson upon the occasion. I was favoured with your last by your Son Frederick who I was happy to see and I hope the next Summer I shall have more of his Company he informed me that his Brother was returned from the Continent."

You will remember the letter stating that his son was upon the continent, on his way to Lyons. Then the letter continues thus—

" I hope he is well after his Journey—Should your health permit you ever to travel into this part it would give me great pleasure to see you here to spend a few weeks with me; you will please to accept my best thanks, for I found great benefit from the Sea Air and am now very well. With my best regards to Mrs. Dawson and all your family

My Dear Sir Yours Most Affectionately

JOHN MARSDEN.

P. S. Mr. Wright desires his Compliments to you."

The next letter is from Dawson to Marsden, in these words—

Digitized by Google

"St. Leonards Hill, Berks Septr. 1819

My Dear Sir,—As it is a long time since I have had the pleasure of hearing from you I write a few lines in hopes of hearing a good account of your health, and that you have had no return of the Complaint in your Eyes—If my power was equal to my inclination I should certainly accept your kind invitation and pay you a visit but as that cannot be done as I am positively forbidden to take long Journies. I can only visit you by proxy and send my Son William who will be most happy to pay you a short visit as he is going upon an excursion of a few weeks into your part of the world provided it should be perfectly convenient to you to receive him which is an additional cause of my writing as Frederick took you last year by surprize at the Sea Side. The latter desires me to say that he has not forgotten you and Mr. Wrights kindness and that he much regrets that it will not be in his power to accept your friendly invitation this season as he must postpone so distant an excursion to a future year. Mrs. Dawson and my family write in best regards with

My Dear Sir Yours affectionately

WM. DAWSON.

Pray give my Compliments to Mr. Wright

Windsor, October second 1819.

(Addressed) to J. Marsden, Esqr. Hornby Castle nr. Lancaster,

Harcourt."

Here is a letter from Frederic Dawson to Marsden, dated 18th August 1825, which I cannot read, the writer of it being alive; but here is a letter from William Dawson himself to Marsden, dated January 13th, 1826, being shortly before Marsden's death, in which he says—

"No doubt my Dear Sir that my son Frederick whilst under your hospitable Roof announced to you as I had desired the intended marriage of my eldest son to Miss Louisa Drake Garrard an accomplished amiable and elegant young Lady, branching from the amersham family. Sorry am I to announce her sudden dissolution and the severe shock he received in hearing of her death without any previous intimation upon making enquiry at her Mother's house in Town on his way to Brighton where he now remains to perform the last painful and melancholy duty in attending her remains into Hertfordshire to the family vault and I have much to apprehend upon account of his health from the severe affliction he is under as well as from the severity of the weather—It gave me some pleasure to hear from Fredk. that you were in perfect health, the enjoyment of which I hope you will experience for many years to come, Mrs. Dawson writes in the same wishes, with my dear Sir

Your truly affect Cousin

St. Leonard's Hill near Windsor, Jany 13, 1826.

WM DAWSON."

That letter is dated January 13th, 1826, and it appears from it that Frederick Dawson had been there.

Then, gentlemen, this is the last letter, and it is from Dawson to Marsden, dated St. Leonard's Hill. It says—

"My Dear Sir,—My Life has been so uniform since I last had the Pleasure of hearing from you, that no event has arisen to render it necessary to trouble you with a letter, but as my Son Frederick proposes visiting Craven to relax from his Law Studies I take the opportunity of thanking you for your last letter, and also yourself and Mr Wright for the Box of Moor Game you were so obliging to send me which were very fine and in good condition. I thank God, got through the winter tolerably well although subject to frequent attacks of my tiresome complaint, but as for persons at my time of Life, are intirely free from one infir-

Digitized by Google

Digitized by Google

Digitized by Google

mity or other, I feel thankful that I am as I am—I hope this will find you an exception to my observation and quite well. With Compts. to Mr. Wright believe me my dear

Sir Yours very affectionately

WM. DAWSON

Mrs Dawson and my family desire to add their best regards."

Has your Lordship got a copy of that?

GURNEY, B.—No.

ATTORNEY-GENERAL.—I will hand it up (doing so.) Now, gentlemen, that is the whole of the correspondence of Mr. Marsden with Mr. Dawson. I was wrong in stating that three of his children had been there. It appears that only two of them had been there, namely, William and Frederick; but, instead of the three being there, each of those two were there twice. Frederick was probably there three times, and William twice. The father himself was there once at least, perhaps much oftener. They were certainly related as cousins, and from that the intimacy existed. Gentlemen, these letters contain a statement of family matters and the principal events concerning them. They are just the sort of letters that persons would write to each other, who had the ordinary intelligence that belongs to such persons in their respective situations. They take an interest in each other's welfare; and that friendship and regard seem to have existed, which generally prevail amongst relations towards each other, and which one must have expected to hear. I know it has been said "Mr. Dawson was very glad of going there, and very glad to send his sons there, he perhaps being in quest of a legacy, and that therefore they kept up this correspondence." It may be so, gentlemen—I do not know why Mr. Dawson should be considered as less entitled to form a correct judgment of a man's competency, because he might be looking to the very circumstance which is the very point and pinch of this cause. The question is—did Mr. Dawson—did his sons, who were there over and over again—did they expect a legacy? If so, then they must have known that Marsden was competent to make a will, for, otherwise, they could not have it. I care not how my friend may take it; he may endeavour, from the manner in which Mr. Dawson and his family visited and corresponded, to cast a doubt upon his motives, and say they were not those visits of duty and affection between relations. But at all events as it was plain that Dawson was not the heir at law, even if he had any sinister design in going there, or if he supposed he was to derive some benefit under Mr. Marsden's will, he would not have taken that trouble to visit and to write to a person incompetent to make it,—so that the more my friend says that Dawson had sinister motives, the more I say that Dawson's evidence, as to his competency, derives further strength from those questionable motives, if there were any, now since he has had no benefit from under the will. I say nothing to impeach his judgment of Marsden in those letters; he

Digitized by Google

addresses him in the unaffected language which a father—as a parent—would feel, I think, from the beginning to the end of the correspondence. I may admit there are no proofs of Marsden having had an intellect of a very high order; but I think the impression ought to have been this, that Dawson must have known the man he was writing to, and receiving letters from,—and he himself was perfectly competent to judge whether Marsden were of a capacity to write those letters. He sent his children there, who must have come back and have made a report confirmative of his own judgment. They were then arrived at that time of life to form a judgment themselves; and however much it may be supposed that Mr. Dawson might blind himself, yet his children could not have been blinded. It is not that I am instructed to state this, but I have heard it stated that there would be an attempt to prove that they must have known his incapacity at the very time this correspondence was going on.

Gentlemen, there is another class of correspondence which I do not intend to read,—I will only state to you what it is. Sometime in the year 1814, a gentlemen of the name of Alexander Marsden, one of the secretaries of the treasury in Ireland, and brother to the Mr. Marsden who was secretary of the admiralty in England, (and who preceded John Wilson Croker,) this Mr. Alexander Marsden addressed a letter to Mr. John Marsden at Hornby Castle. In that letter he speaks of their common name and his own origin, and he solicits an acquaintance with Mr. Marsden. From that time a correspondence commenced and continued some time; and at length it is supposed from a letter, that he went over to Hornby Castle and there staid for a short time; I believe not for a very long time, but he remained a night or two and dined and spent the day with him. Mr. Marsden of Hornby Castle, with that degree of proper benevolence, hospitality, and courtesy which signalised him, immediately insisted upon his taking up his abode at Hornby Castle and sleeping there. Mr. Alexander Marsden's daughter was with him, she having accompanied him. Whether they staid a long or a short time there I know not; but it is sufficient for my purpose that they dined there, and slept there, and spent the days and passed the evenings in his company for some time; or whether they quitted the very next day; it is sufficient that Alexander Marsden had various private interviews with him, and I think I remarked on Saturday that if two persons sit down to two or three meals together, although they might not find out the character of each other in every respect from what was said, yet you will generally find out, during such interviews, whether the person were competent or not. That may in many cases be done even in the short space of half an hour, unless there be a *monomania*, or madness upon one point existing in the mind, which might not be discovered unless it happened to be touched upon. That, however, is not the case; long after Mr. Alexander

Digitized by Google

Digitized by Google

Digitized by Google

Marsden had paid that visit, he continued that correspondence with John Marsden down to the time of his death. My learned friend will perhaps say "Mr. Alexander Marsden is alive at this present moment." I believe he is so—but, gentlemen, he is a very old and infirm man, and even if he were here his testimony might not be worth any thing to either party, on this occasion, from his infirmities. If he had no infirmities whatever, what his testimony would be I am perfectly unable to tell you. If he could be prevailed upon to come as a witness against Marsden's capacity, he is alive, and my friend could have called him: but now my friend will be pleased to say he could not call an individual who was anticipating a legacy; and that as such, he was stooping to intellectual commerce with an idiot, for the sake of a legacy, or whatever other benefit he could get. My answer to all that, is, that he has no legacy, and never expected one: but if he did, then he expected also that Mr. Marsden was capable of making a good will.

Gentlemen, this correspondence must satisfy you, that Mr. Alexander Marsden is a gentleman of education and of high station and rank. He sends his letters to Mr. John Marsden, from Ireland, in government franks; in his capacity as secretary he was capable, by his mere initials in the corner, to frank a letter or parcel of considerable weight, even without a date: these letters came franked in that manner. Now, gentlemen, when I have the fact of a gentleman of his station, rank, and character, continuing such a correspondence, does not this afford strong evidence in such a case? But, says my friend, "how did it begin?" Alexander Marsden wrote the first letter, "Oh dear" (says my friend again) "he never saw him, and therefore he knew nothing of him." But, gentlemen, if I trace his residence at Hornby Castle by the invitation of Mr. Marsden, even for a short time, (I care not whether for one night or more, or not at all, during the continuance of this correspondence) the effect must have been the same: he must have seen Marsden in his domestic retreat. He was received as a probable relation, and when that gentleman continues to correspond with Marsden for a period of about four years after that, I have the fact that is alone necessary to be shown, and it is undoubtedly that fact which affords me the strongest testimony that Mr. Alexander Marsden thought he was perfectly competent to make a will. But why are we to disparage Mr. Marsden in regard to his competency, even supposing there were that interested view which my friend attributes to the conduct of the other? Mr. Marsden of Hornby Castle, certainly had no children; he had no immediate heir to his property, nor very near relations—certainly none. At that time, and down to his death, he proved childless. When I speak of Mr. Lister Marsden being indifferent as being only a second cousin, yet, whatever value may be

Digitized by Google

put upon that circumstance in another part of the Island, it is admitted it is not such in the south. Be that as it may, however, Marsden had a refined and nice mind upon such a circumstance, and gave great weight to even that degree of relationship; as you will find from the answer he sent to the first application, not taking it as part of the correspondence for other purposes, but as showing how far Marsden took an interest in his own pedigree, and the history of his own family. It may not be immaterial to observe that that certainly could not have been the case unless he were perfectly competent to form a judgment on such subjects. I shall only read you one letter, and you will find that Marsden was remarkable for his memory of dates and pedigrees; his memory will be proved to you to have been also very retentive upon public events.

On the 20th November, 1811, Mr. John Marsden writes to Alexander Marsden from Hornby Castle, thus—

"Sir,—I was indeed surprised, but very agreeably so, on the receipt of your letter you hon'ored me with. I was highly obliged by the frankness with which you have communicated to me your desent, and the circumstances respecting your family; and in return it is with pleasure that I state to you the short history of mine; if from thence it can be ascertained that I have the honor of a Relationship to a family of my own name, in every way so respectable as yours, it cannot fail to afford me the highest gratification.

My Ancestors resided for some Centuries at Gisburn Hall, in Craven, and had considerable possessions there, and also in a village called Marsden, near Colne, from which I presume they originally sprung, they had also possessions in the Borough of Clithero, and one of them sat in Parliament for that place. These possessions has long since been all sold. I believe a branch of my family settled at Manchester two hundred Years since, and I have heard that some of them afterwards removed into Derbyshire. Their arms were the same with mine. My Ancestors removed to Wennington Hall near Hornby about the year 1600. My Grandfather Henry Marsden died about 70 years since, leaving my Father Henry Marsden his only son. He died about 53 years ago, leaving my elder brother Henry and myself his only issue. My brother died unmarried soon after coming of Age, When I became the Sole descendant of my family in the male line, which on my death will probably become extinct, as I have never been married. If this detail should induce you to make further enquiries I shall be happy to give you all the information in my power.

Your obliging tenders of hospitality to any relative or friend of mine merits my warmest acknowledgments which I beg of you to accept; and should you or any of your family or friends visit this part of the world, I shall be happy to receive you or them here, and should it be in the Shooting Season, I think I can promise as much divertion in that way as most private Country Gentlemen can Command, I am with sentiments of the highest respect,

Sir, your most obedient,
and very humble servant,
JOHN MARSDEN.

(Indorsed) Copy of a Letter to Alixander Marsden, Esq. Dublin."

This was in answer to the first letter of Alexander Marsden, in Ireland, who thinks his ancestors sprung from a Derbyshire branch. Then their correspondence went on for some time after his visit to Hornby Castle. Gentlemen, I shall no further

Digitized by Google

Digitized by Google

Digitized by Google

trouble you with these letters, but you may hear them read, and see them by and bye. I merely read you one letter of that correspondence, in order to give you a notion of Marsden's attachment to pedigree and such matters. It is plain that he wrote that letter in 1811, at a period when Mrs. Cookson was dead: Henry Tatham was dead--Miss Tatham was dead, and everybody was dead about him that could have afforded him any assistance, and unless he gave that account of his ancestors from his own mind, it was evident he could not have given it at all; for Wright, however much he might have assisted him in matters of business, or to carry on a business correspondence, was quite incompetent to tell him what to say as to the descent of his family, or where they had originally been settled—and, gentlemen, it is worthy of remark that the whole of that letter turns out to be perfectly true.

Now, gentlemen, here are some letters forming another class of correspondence I alluded to in the outset, between Mr. Greene and Mr. Marsden: those are letters as to the purchase of the Hornby Castle estate, and some other business. Mr. Greene, as I mentioned on Saturday, was an attorney of the highest eminence in London: he was the father of the present member for Lancaster, and he possessed considerable property in this neighbourhood. He knew Marsden perfectly well—none better: and that will be proved to you *dehors* the letters, but you will find from the letters that there can be no doubt about that fact. This Mr. Greene carried on a correspondence with him upon various subjects in which Mr. Wright is occasionally adverted to. Mrs. Cookson was adverted to also; but still Marsden is the gentleman with whom the correspondence is carried on: he is the individual referred to, and I have only to ask you whether you believe that correspondence to be genuine, so as to form a decisive and clear answer upon the whole issue in this cause? I do not mean to say that all these letters were written by Marsden without any sort of assistance whatever. I do not mean to say that; as to some of them, it is quite plain that he did not write them solely without receiving assistance, as he expressly says he has been collecting facts from others which he communicates. There are others that I have no doubt he wrote after conversations with Mrs. Cookson; or, gentlemen, one or two of them may have been written after conversations with Mr. Wright, Mr. Marsden having discussed the subject with him, and supported his own view of it, and having come to a conclusion, he put that down in his letter. I am told that some of those letters display a very different degree of intellect from the onset, when compared with Mr. Marsden's correspondence with Mr. Dawson; that is to say, they differ materially from those trumpery details about mantle pieces, shooting, fishing, and sending boxes of woodcocks and so on: those are a very different sort of letters. If it ever happened to

Digitized by Google

you to look over any of the correspondence of some of the greatest men, you would find they wrote occasionally upon all manner of trifling subjects: so, I submit in this case you will find that some letters appear to have been made up from some of the most trifling details, while others are more serious. It has been said, and said with truth, "a great man is but an ordinary, and even a little man, in ordinary matters." Gentlemen, I venture to say that these letters, if genuine, are decisive of the cause. It has been said that although Mr. Greene and Dawson, or some of their sons, were there, they were not there when Marsden was there, or that they were there but for a very short time: but I submit that these letters, passing between Mr. Marsden and Mr. Greene, show plainly that he abundantly and thoroughly knew him—that Mr. Greene had been with him over and over again, and had transacted much business with him. If Mr. Greene's memory be to be tinctured with the slightest particle of honourable recollection,—unless he be to be consigned to infamy by having made himself a party to a gross and abominable fraud,—the result of these letters must be decisive of the cause.

Gentlemen, the very first letter which is addressed by Greene to Marsden, is dated Gray's Inn, 11th Sept. 1787. This is new, I believe. Has your lordship got a copy of it?

GURNEY, B.—No, I have not.

ATTORNEY-GENERAL.—Then there is one; there is one for your lordship and another for the counsel. (Handing them in.) This letter says—

"Gray's Inn, 11th Septr. 1787.

DEAR SIR,—I was favored with your Letter & also Mr. Fitzgeralds to whom my Complts. I have been all this morning with Mr. Dunn & have sketched out the Heads of an Agreement, a copy whereof is on the other Side & a Copy is also sent this Post to Lord Wemyss."

Hornby Castle was bought of the trustees of Lord Wemyss; and Lord Elcho being his eldest son, it was necessary for him to make the title perfect.

SIR J. SCARLETT.—There is another letter which you have omitted, if you have it.

GURNEY, B.—I have two letters; the one in August, the other in September, 1787, from Marsden.

ATTORNEY-GENERAL.—There is one in August, and another of the 7th September 1787. I will shortly read them. The only reason that they were not in our possession was, that they were brought into court the last time, and were returned into the custody from whence they came, namely, Mr. Greene, the present member for Lancaster, his son, who sent them to Mr. Forrest, the officer of the court, that they might be used. I am obliged to my friend for suggesting as to whether I have got them or not.

GURNEY B.—The first is in August, and it begins, "My aunt is so poorly."

Digitized by Google

Digitized by Google

Digitized by Google

ATTORNEY-GENERAL.—It is written by Marsden, and has the Lancaster post-mark upon it, and has the year "1787" visible, (reading it.)—

"DEAR SIR,—My Aunt is so poorly she has desired me to answer the Letter she received last night. I wish you had concluded the Bargen with Mr. Dunn—when you saw him you had full powers from my Aunts last letters given you which I saw & approve on—If the consequences were of so little concern to me that I would trust to the mere toss up of a die, I would never have bid at it at all, but I look upon it as so necessary to my interest that I beg and intreat you to make no delay to purchase it if even I give a thousand or two advance—as soon as you have concluded the Bargain I beg to hear from you, if you think it not improper please to propose them to keep it a secret awhile.

My Aunt joines with me in Compts
and am, Dear Sir
Your obedient humble Servt.
J. MARSDEN.

Wennington Hall August 1787."

The next is a letter of the 7th September, 1787, from Mr. Marsden, also to Greene, with the Lancaster post-mark. It says—

Wennington Hall Sept 7. 1787.

"DEAR SIR,—Mr. Fitzgerald having communicated a Letter from you to him dated the 3d instant in which you express a wish that I should give my sanct'on to the treaty of the Hornby purchase. I write this fully to authorize it. I observe you say that Mr. D says we must give £53,000. If that largeness of the sum be the only objection, I request you will on my bhalf offer for the estate £53,000 and close with them as soon as possible. And I shall be very glad to hear that it is obtained at that price. If more we must give it rather than let it slip. I refer you to the former Letters and leave it to you to settle the terms of purchase as well as circumstances will on the principles in these Letters enable you to do. I am sorry it will be the means of detaining you in Town longer then you intended but I rely upon your attention to it for which I shall always think myself obliged to you.

I am, Dear Sir
Your most obedient humble Servt.
J. MARSDEN.

My Aunt & the Gentlemen present their Compliments"

It should seem from this, that Mr. Fitzgerald had made that communication.

The next letter is dated 11th September, 1787, from Mr. Greene to Marsden.

"Grays Inn 11 Sepr. 1787.

"DEAR SIR,—I was favored with your Letter & also Mr. Fitzgeralds to whom my Compits. I have been all this morning with Mr. Dunn & have sketched out the heads of an Agreement a Copy whereof is on the other side, & a Copy is also sent this Post to Lord Wemyss.

I have also sent you Copies of two Letters recd. the last since we sketched the Agreemt. & which was to have been altered shod. such Letter have produced any Terms more favourable to you than the former.

I think if you approve the Terms your best way will be to get a Stamp & let Mr. Fitzgerald run over the Agreement a little more in Form* and you to execute in the presence of himself & your Aunt & return it to me, if I shall have left Town before it arrives I will take care about leaving proper directions with Mr. Dunn &c.

I think before you enter into this contract the title Deeds to the Estates you intend to sell should be examined by Mr. Fitzgerald to see that every thing be clear & an Abstract shod. be made thereof, that a Purchaser may have no Pretence for disappointing you in the Payment of his Purchase Money

* referring to the printed particular.

Digitized by Google

The object of this arrangement being to buy Hornby Castle for fifty-three thousand pounds; to sell Wennington Hall, and the other estates, so as to have a part of the purchase of Hornby upon mortgage; it was essential that he should see not only that he had a legal title, but an equitable title, so as to borrow money to pay for Hornby Castle estate when bought. Mr. Greene goes on to say—

It is rather a bold undertaking (tho' it may answer well) provided you can steer clear of Inconveniences which often arrive very unexpectedly.

I most heartily wish this purchase may answer your most sanguine expectations—

I am Dr. Sir
Your very sincere friend
& hble Servt.
THO GREENE

(Addressed)
John Marsden Esqre.

P. S. It will be time to get such of your Estates as you mean to sell advertised & wod. not have you disclose this Agreemt. on any consn. till after I have had the Pleasure of seeing you in the Country – It may injure the sale of your Estates if it be known that you must sell & for other reasons keep the secret.
John Marsden, Esq."

Then this is what he sketched out.

Mr. Greene's Client will give £53,000 for the Hornby Estate, to be paid in the following manner

£10,000 or 15,000 to be paid on the 1st March next, & the residue of the Money to be paid on or before the day of May 1789.

For securing the Residue of the Money with Interest at 4 10 0 ℔ cent it is proposed that on Paymt. of the 10,000 or £15,000 the Estates shall be conveyed to Trustees (to be nominated by the Purchaser & the seller to raise the same on or before the said day of May 1789 by Sale on Mortgage, & afterwds. to the Purchaser in Fee—The Purchaser also to give his Bond for Payment of the Money—

The Purchaser to be entitled to the rents from Candlemas next & to pay Intt. on the residue of the purchase money at £4½ P cent from that time

That the Trustees or their Agent receive the Rents till the Purchase is compleated & pay the Intt. thereout in the first Place, and the Residue to the Purchaser.

Gentlemen, that letter of the 11th is answered by Marsden, on the 17th, in these words—

" Dear Sir,—This post will bring you the articles I have executed according to your Letter. I return you my most hearty thanks for the part you have acted and for your kind wishes.

We all join in Compliments and shall be very happy to see you here so soon as your own affairs will allow of it. Mr. Fitzgerald will write along with the articles. My Aunt and the Gentlemen join with me in Compliments to you

I am Dear Sir Yours sincerely

Wennington Hall Sept. 17. 1784 J. MARSDEN"

Mr. Fitzgerald was a gentleman who was there, and some way connected with them, and staying in the house. I do not pretend that the scheme of this purchase was Marsden's own. I do not affect to say it was at all his, but I do in fact say, that Mr. Greene was a man of very high truth and integrity; and it is quite plain that, whoever drew the scheme, the adoption of it was Marsden's

Digitized by Google

Digitized by Google

Digitized by Google

own; and it was done with as much deference to him as possible, with respect to judgment; that his pleasure was taken upon it; his opinion was consulted, and his feelings regarded. Although the scheme might not be of his own completion, yet throughout, he was treated by Greene as a man capable of adopting it, or not adopting it; and in doing so upon grounds which, although they might not occur to his own mind, his own mind would appreciate it when approved of by others. This is Mr. Greene's answer to that letter, dated Gray's Inn, 22d Sept. 1787. This is a letter which I believe is new. Has your lordship got a copy of it before you?

GURNEY, B.—No, I have not.

ATTORNEY-GENERAL.—I will hand up one, (doing so.) This is a letter addressed to John Marsden, Esq. Wennington Hall, Kirkby Lonsdale, Westmoreland. You will find the character of this letter.

Sir J. SCARLETT.—You read that of the 17th, sent by Marsden, have you?

ATTORNEY-GENERAL.—Yes. In answer to the one of the 11th, if I mistake not. I cannot complain of the interruption, as it will give me the opportunity of a pause. Short as the time may be, I beg at least that it may not (to speak in a commercial way) be set down to my debit. He says—

"DEAR SIR—I am just now told 1300d Sailors were pressed last night on the River I dare not proceed further in your Business without your positive Orders. If a war ensues which looks daily more and more probable, if you go on with this Bargain your own Ruin may likewise ensue.

I have not been to Mr. Dunn nor have I heard any thing from him

Yours Dr Sir very sincerely

THO: GREENE."

This letter is new, but it is important. If I recollect rightly it was said towards the end of last century, both in parliament and elsewhere, before the bank stopped payment, that the effect of war used often to effect the landed interest, and therefore Mr. Greene had not then come to terms; for after the bank restriction act, the prices of land got high. It is well known, that land got up an enormous amount during the war, and in common with others, the Hornby Castle estate, which in 1789, when the purchase was completed, was only worth about £1,200, or £1,300 a-year, became five or six times of greater value, in the years 1812 and 1813, it being worth in those years about £6,800 a year: and then after the return of peace, and about the time of the death of Mr. Marsden, the price of land fell so, that it became worth about £5,800 a year. The actual amount at this moment is between £4,000 and £5,000 a year. Greene, therefore, with proper caution, writes Marsden, that a sudden event had occurred calculated to affect the prices of land in an alarming degree, and dissuades him from the bargain.

Digitized by Google

The next letter from Greene to Marsden is dated Gray's Inn, 10th February, 1789—

"DEAR SIR—As we propose paying Lord Wemyss the 73,000 in May next for Cockerham I thought it probably might be more money than he wod. expect at that time (as by agreemt. we had two years to pay it in) & therefore I wrote to him saying that perhaps it might be some accommodation to you to give you another money to raise the residue of your purchase money.

The letter in Ansr. says no more than that Lord Wemyss will be in Town next week when the Business will be talked over & he hopes settled to the satisfaction of all Parties. I just drop you this Intelligence—you will let me know if such an indulgence will in any manner suit you Yours truly

(Addressed to) John Marsden Esq THO: GREENE.
Wennington Hall Lancaster"

This is also new, I will therefore hand up a copy of it to your lordship, and one to the other side.

The next is the copy of a letter from Marsden to Greene, which has never yet been laid before a jury, and therefore I will hand in copies. The date is by an endorsement in Marsden's own hand-writing, Oct. 9, 1790—

"DEAR SIR—I was favoured with yours of the 15th of Septbr. I desired Mr. Barrow to write to you respecting Wildman which he told me he had. Mr. Totton of Lincolns Inn has wrote again requesting the attested Copies of those Deeds which was to have been made against the time the purchase was compleated I must now beg to know what is the reason that they are not delivered to him if they are postponed much longer it will be attended with serious consequences to me. I have wrote to Mr. Totton telling him they shall be delivered Mr Wright has remitted the remainder of the Interest to Messrs. Child & Co. when you come down the whole shall be settled.

I am Dr Sir
Your most Obt. Hble. Servt.

(Indorsed) 9th. Oct. 1790. J. MARSDEN.
Copy of letter to Mr Greene."

We have next a letter from Mr. Marsden to Mr. Greene, and I believe this is also new. You will understand when I say new, I mean that, although all the letters have been scheduled, yet upon former occasions, from their being dispersed a little, we had not got them along with the others. We now have got them, and I put them in. This letter is dated Wennington Hall, 11th May, ~~1792~~ 1792—

"DEAR SIR,—I am happy in having the Honour of Congratulating you upon your Marriage with Miss Dawson and may every happiness attend you both.

I have taken the liberty of sending you a few potted Smelts which I hope you will receive safe they will be sent of by the Mail Coach to-morrow.

Should you and Mrs. Greene come into the North I shall be very glad to see you at Wennington Hall. I beg my compliments to Mrs. Greene

I am Dear Sir your obliged Hble Servt.
J. MARSDEN."

The next is a letter from Greene to Mr. Marsden, Wennington Hall. I believe this is new (handing in copies.)

"DEAR SIR,—I am writing to Mr. Wright respecting the recovery suffered of Hornby & must not omit returning you my most sincere thanks for your polite Congratulations on my Marriage I shall be extremely happy to have the opportunity & I hope the Time is not far distant that I may repay you in Kind

Pray remember me kindly to Mr. Harry Tatham, tell Mrs. Tatham is down at Dover with her Son William the last Accts. were favorable

I am Dr. Sir
Your much obliged & mt. ob. hble Servt
(Directed) John Marsden Esq Wennington Hall" THO GREENE

Digitized by Google

Digitized by Google

Digitized by Google

We may collect from this, that Mrs. Tatham, the mother of the Admiral and the other children, was alive in the year 1792. When I read this passsage, "I hope that the time is not far distant when I may repay you in kind," I cannot help alluding to a part of Marsden's History, which came out in evidence upon the former occasion, as it is not likely that the opportunity of doing so will ever occur again. Marsden met with an unfortunate accident when he was hunting, and it was not likely after that, that he should ever think of contracting marriage. Here is a letter from Greene to Marsden, dated Warton, 15th Octr. 1792. Now you will see the letter—there it is, sealed and directed to John Marsden, Esq. Wennington Hall, and put in at the Lancaster post-office, so that there is no doubt about it, and it is half a sheet. I beg you to observe it in that way. It is in these words—

"Warton 15 Oct 1792

Dr. Sir,—I propose being at Kirkby Lonsdale (Mrs. Gathornes) on Wednesday Evening & shall return to Slyne on Monday, I write to the same effect by this post to Mr. Croft & Mr. Barrow that we may contrive a meeting respecting the business Mr. Barrow wrote to me about

I am Dr. Sir
Your mt. obe. hble Ser
THO: GREENE

I am short of paper here so excuse half a sheet
(Directed) John Marsden Esqr. Wennington Hall"

This was in 1792, and you may remember Thomas Croft's letter, in 1792, was rather an important letter, connected with Croft's having the great tithes.

The place from which this letter is dated, called Warton, is, I am told a very small village, where you may not likely get more than half a sheet of paper, which may account for his adding in a postscript "I am short of paper here, so excuse half a sheet." There it is, half a sheet, and the post-mark upon it, which gives it the character of genuineness. Your lordship has a copy of it, I believe.

Here is another of which I propose to hand to your lordship a copy. It is dated Gray's Inn, 14th Decr. 1792, from Greene to Marsden—

"Grays Inn 14 Decr. 92.

Dr. Sir,—I saw Mr Wildman again this morning & I expect he will in a few days send me the Drt. of the Conveyance to look over, so that I hope the whole Business will be compleated before Candlemas

I have this day sent you by the Settle Carrier a parcel of pye fleet Oysters directed to be left at K Lonsdale I hope they will prove good & acceptable

Pray my Compts to Messrs. Tathams and Mr Wright

I am Dr. Sir
Your much obliged hble Servt
THO: GREENE"

John Marsden Esq Wennington Hall Lancaster

Who those Tathams were that are here mentioned I do not know, but I suppose the one must have been Henry Tatham, and not William, as he went early abroad. It must have been so, because Charles was in Alexandria; and in 1788, William went

Digitized by Google

to America; and as they are spoken of here in the plural number, the other one must have been Admiral Tatham himself. I not aware that, in the former correspondence, that fact appeared so distinctly. This is given to day for the first time. The object is to show by this correspondence how intimately Greene knew Marsden, the terms upon which they were, and the manner in which Marsden was considered by this correspondent; and this was shown when there was an appeal from the Master of the Rolls to the Lord Chancellor, upon the subject of a new trial. I may not, perhaps, be allowed to hand in to your lordship the judgment of the court of chancery upon that occasion, but I have it here in detail, as taken by the short-hand writer; and from the tenor of it there is no doubt; it appears that this letter had great weight. We have added these others upon matters of compliment to the business-letters of Greene, to show how they treated Marsden.

The next is also a letter which I believe has not been given in evidence before upon the other trials. It is dated, Gray's Inn, 26th January 1793, from Greene to Marsden, and I will hand in copies of it, (doing so.) It states—

"Grays Inn 26 Jan: 93

Dr. Sir,—Mr. Wildman has at last sent me the dts. of the conveyances to Mr. Skirrow and to Ricd. Wildman the latter is made by the approbation of Skirrow testified by his being made a party I apprehend it is totally immaterial to you in which way it is conveyed provided you get the money—I will send you a short Abstt. of the drts. in a post or two—I see by the Contract that Skirrow was to be at the Expense of the Abstract & nothing further I wish it had extended to copies of deeds

I am afraid there will be some squabble abt. the interest I saw Mr. Wildman this Morning who had received a letter from Mr. Croft of which I send you a Copy on the other side I wish Mr. Wright and you will consider it and make me out your account up to the 13 Febry. or rather 1st of March

Yours Dr. Sir most sincerely
THO: GREENE

(Addressed to) John Marsden Esqr. Wennington Hall Lancaster"

Then here is the extract referred to in that letter—

"Extract from Mr. Crofts letter to Mr. Wildman dated Jany. 16th 1793

The old rent for Haterbeck Barkin & Tythes was £80 Tythes accounted £35 leave s Haterbeck and Barkin £45 since purchase Barkin has been let at £40 —Haterbeck say £20 makes £60 for 4 years is £240. R S leaves the whole Business to your Settlement but hopes as the title was not sufficient the Vendors would be content with what the Lands made if not with the old rent"

I now come, gentlemen, to a letter, dated Wennington Hall, 1793, from Marsden to Greene—

"Wennington Hall 14 Feby. 1793.

Dear Sir—I have this day sent you by the Mail Coach in a Box two Brace of Woodcocks and a Hare which I hope will prove good.

I am much obliged to you for the Oysters which you sent me."

That is in answer to the former letter of 14th December, 1792, in which Mr. Greene mentions having sent Marsden a parcel of what he calls "*Pye fleet* oysters," meaning, no doubt, "Purfleet

Digitized by Google

Digitized by Google

Digitized by Google

oysters," that being a place celebrated for oysters; so that is a mistake in his former letter. Then Marsden goes on to say—

"I ment to have sent you a Brace of Woodcocks some time ago but they have been so very scarce that I have seldom had more than one in my House at once.

You will please to make Counterparts of the Deeds to Skirrow and Wildman for them to execute that I may have them to keep amongst my writings.

Pray inform me if you have received those Deeds sent by Mr Wright and how that Business goes on

I beg my Compts. to Mrs. Greene

I am Dear Sir
Your much Obliged
Hble Servt.
J. MARSDEN"

The next letter is dated Gray's Inn, 16th February, 1793, from Greene to Marsden—

"Grays Inn, 16th Feby. 1793.

DEAR SIR,—I was favored with your Letter this Morning & soon afterwards with the Box containing a Hare and two brace of Woodcocks for which you may have my best thanks

I duly received the Deeds sent by Mr. Wright the only difficulty now remaining is the objection to pay interest at 4½ P Cent

I wish Mr. Wright wod. send me what he thinks the rents shod. be up to the 1st March & perhaps I can get the business put an end to by leaving it to Mr. Atherton & Mr. Shadwell to settle the difference therefore desire Mr. Wright to write as soon as he can. My Complts to him & Mr. Henry Tatham

I am Dr. Sir
Your most obliged hble Servant
THO: GREENE

I shall present your complts to Mrs G in abt. half an hour

J Marsden Esqre"

Then we have another letter from Greene to Marsden, dated Gray's Inn, 9th June, 1793, of which I shall hand in copies, (doing so.) He says—

"Grays Inn 9th June 93

DEAR SIR,—I have not been able to get the Business settled with Mr Wildman as to the Rents—I this Morning proposed to leave it Mr Grey Mr Jenkinson or any other indifferent person—Have you any objection or can you and Skirrow agree or any other person—Complts to Messrs Tatham & Wright

Yours Dr. Sir most sincerely
THO GREENE.

(Addressed to)
John Marsden Esqr.
Wennington Hall Lancaster."

The next is dated, Bedford Square, 22d December, 1795. It is a copy from Greene to Marsden—

"Bedford Sqre 22 Decr 1795

MY DEAR SIR,—By last Fridays Waggon I sent you a Barrel of Oysters which I hope you will receive good they will be at Lancaster on Monday or Tuesday next.

Mr Shepherd set out in the Mail to Lancaster last night I sent by him a small parsel directed to Mr. Jackson Mason & in it directed for you a pair of Spectacles which I hope will suit your eyes You will be kind enough to accept them from me as a small acknowledgment of your favors

Pray present my Comts to Mr. & Mrs. Wright & tell him Mr. Lefevre has not

Digitized by Google

been in Town so that I have not yet had an opportunity of seeing him I have purchased the Quit Rent for Hornby Cell. I have not yet got the grant or shod have sent it by Mr. Shepherd

On Saturday I saw Mr. Wildman as well as I am at present on Sunday night he was taken ill in Bed & died in an hour

I am Dr Sir Your obliged & obt. St
THO. GREENE

Have you seen or heard of Mr. Croft
J Marsden Esqr"

Here is one dated, Hornby Castle, 17th January, 1796, from Marsden to Greene—

"Hornby Castle 17 Jany. 1796

DEAR SIR,—I was from home on a visit to Mr Lister at Giggleswick when your Letter came and only returned on Saturday. I am much obliged to you for your kind attention I have tried the Spectacles and they suit my eyes very well. Whilst I was at Mr Listers Mr Croft came to visit Mr Parker I had just time to speak to him. I told him I should be glad to see him at Hornby Castle in order the business might be settled some way or other he promised me to be here this Month but I do not expect him he appears to pay more attention to visiting than settling any of his affairs. Since my return I have been called upon for another years Rent for the rectorial Tythes of Gargrave which must be paid and as to his promises I can expect nothing from them I beg therefore you will have Mr Croft served with a Writ it will be of no great expence and it will perhaps bring him to terms. You will please to let me have your sentiments upon this business as I cannot be put off by him any longer in the way he has treated me I am with compliments to Mrs Greene hoping your young Gentlemen is well

Dear Sir your most obdt Hble Servt
Mr Greene J MARSDEN"

Gentlemen, that letter, and probably what took place upon it, explains the stiffness with which, in the year 1802, Mr. Croft, knowing what had passed, wrote to Marsden on the subject of his vote on the occasion of the election; and although he had a desire to do whatever Marsden wished, declining first to give a promise, and then saying, "I will come, however, if I am wanted."

Then there is a letter from Greene to Marsden, dated Bedford Square, 15th February 1796—

"Bedford Square 15 Feby 96

DEAR SIR,—I was duly favored with yours of the 26 Jani & am glad the Spectacles suited your Eyes

The plan I proposed to Mr. Croft was for him to have 100*l.* a year to live upon & to remit the Rest to me, say 200*l.* a year to be divided amongst his Creditors. I wrote to him since I got to Town to have the plan carried into execution and the two letters I have had from him I inclose. Soon after the last I received a remittance of £50—here are a few Creditors in Town rather importunate—he seems to complain of Mr Tindal being remiss in getting in his dues—had Mr Wright time perhaps he might do it better—pray my complts. to him Mrs. Wright & Miss Tatham—tell Mr. Wright I have not yet been able to see Mr. Lefevre he is not yet come to Town.

I am Dr. Sir with great esteem
Your sincere friend & obliged Sert.
John Marsden Esq. THO. GREENE."

The next is a copy of a letter, dated Todworth Court, Glostershire, 31st March, 1796, from Greene to Marsden—

"Todworth Court Gloucestershire 31 March 96

DEAR SIR—Before I left Town I had the pleasure of seeing my neighbour Mr Lefevre he said he wished much to have his money paid in, I told him of the

Digitized by Google

Digitized by Google

Digitized by Google

impossibility of raising it at present & assuring him of the ampleness of his security & I have no doubt but he will do every thing to accommodate you
I beg my complts. to Mr. & Mrs. Wright and to Miss Tatham
I am Dear Sir
your obliged & obedt. Servant
THO: GREENE

(directed to) John Marsden, Esq.
Hornby Castle Lancaster."

Then here is a copy of a letter from Marsden to Greene, dated Hornby Castle, 7th July 1796—

"Hornby Castle 7th July 1796

DEAR SIR—I was favored with both your Letters in due course I would have answered them sooner had I not been in hopes of settling the plan according as you had mentioned in your Letter. Mr Croft came over once and stopped a day or two and promised to come again and have all matters fixed but I have not seen him since—Mr Wright received a Letter from him last night wherein he says he cannot come over. Mr W. as you recommended it said he would undertake the business to accommodate parties although it would be attended with inconvenience to him I am afraid there never will be any settlement with Mr. Croft & I am now a very large sum out of pocket which I think ought not to have been the case after giving him so good a living I could wish much to have your sentiments what is best to be done to bring him to a settlement in any way

Mr Wright begs his Compts. to you
I am Dear Sir
Your much obliged friend and obdt. Hble Servt,
(Addressed to) Mr Greene. J. MARSDEN."

The next is a copy of a letter from Greene to Marsden, dated Bedford Square, 13th January 1797—

"Bedford Square 13 Jan. 1797

DEAR SIR,—Below I send you a Copy of a Letter from Mr. Lefevre I wrote to him that when I was in the Country you were in hopes of raising some money by the Sales of Tythes but from the scarcity of money I was afraid you had not succeeded I also told him I applied to the professional men if any money was to be lent to secure it for you but that as I had not had advice of their being able to procure any money I was afraid it was not in their power

I beg my Compts. to Mr & Mrs. Wright and Miss Tatham
I am Dr. Sir Your mt. obedt. hble Servt
THO. GREENE.

P. S. I told Mr. Lefevre I had sent a copy of his Letter to you and that you wod. answer it you will direct for him M P Bedford Esqr. as he probably may be in Town by that time you will say when you think you shall be able to raise any money

(Addressed) J. Marsden, Esqr"

I have here a copy of a letter from Mr. Charles Shaw Lefevre to Mr. Greene, dated Winchester, 29th June, 1797, annexed to the former letter, and sent by him to Marsden. Gentlemen, you recollect that, among the deeds that I stated to you, was a mortgage by Marsden to Lefevre for £27,000, granted on the 3d of July, 1789, to pay the purchase money for Hornby Castle; and in this year 1797 Mr. Lefevre wanted back his money. Upon that a correspondence took place between these parties, and in it you will find Marsden displays much of the feelings of a gentleman, although he regrets being under the necessity of raising the

Digitized by Google

money. Greene was the attorney for both parties, that is, for Lefevre in getting the mortgage, and for Marsden in raising the money; and, accordingly, he refers them to each other, by this letter annexed to the one I have just now read. It is in these words—

"Dear Sir,—The day fixed for the paymt. of my purchase money is so fast approaching that I am under the necessity of again troubling you respecting the sum which I hoped to have received from Mr. Marsden about this time. You gave me some hopes of procuring it for me at Lancaster & though I trust it will be ready at the day (the 22d: instant) yet if it shod not I must beg of you to inform me how I am to act & what terms I am to propose to the Gentleman who will expect me to pay for his Estate on that day

Yours &c.

Winchester 29 Jan. 97 C. S. LEFEVRE"

The next is a copy of a letter from Marsden to Greene, dated Hornby Castle, 17th January 1797—

"Hornby Castle 17 Jany 1797.

Dear Sir—I was favoured with yours of the 13 Inst. and what means to use to procure Mr. Lefevre his money I dont know it will be absolutely impossible for me to raise it in any way by the time he will want it. I am now pursuing a plan to raise a considerable sum which is as follows from the Corn Tithes which was valued in 1778 by Mr Charteres to £8514. 18. 6 and a Bill is meant to be brought into parliament this Sessions to enfranchise the Customary Tenants within the Manor of Hornby which I suppose will at least amount to between two and three thousand pounds from the Tithes Six thousand might be sold to be paid for at Candlemas 1798 or perhaps the whole of them and like manner would the money be paid for the enfranchisement. You know very well there is no money transactions but at Candlemas in this neighbourhood and money was never known to be so scarce here—by the time I have mentioned I might raise more or procure the remainder for Mr Lefevre provided he should want the whole."

For this purpose I believe there was borrowed from Mr. Bell, the king's counsel, ultimately £7000., and with that Lefevre was paid off in part. He then goes on to say—

"I must leave this matter at present to your discretion and whatever you think I should do either by paying Mr Lefevre any loss he may sustain by not having the money or otherwise your determination shall be binding upon me. I have inclosed you a Letter for Mr. Lefevre which you may peruse and send it or not as you think best. I shall be happy to hear from you as soon as you have seen Mr L

I am Dear Sir Your most obdt. hble Servt.

J. MARSDEN.

P.S.—You'l please to accept of a Hare two Brace of Partridge & a Woodcock which will come by the same Coach with this I beg my compts to Mrs. Greene.

Mr. Greene."

Then comes a copy of a letter without a date, but it appears by the post-mark to be 4th February, 1797, from Marsden to Greene, in which he says—

"Dear Sir,—I was favoured with your Letter and one inclosed from Mr. Lefevre"

It will turn out that Mr. Greene thought it right to send that letter on.

Digitized by Google

Digitized by Google

Digitized by Google

" I have made application to raise the sum you mentioned but without success Candlemas being so near that all the money in this neighbourhood is engaged If that house of mine in the Strand woul'd sell I had rather dispose of it than Mr. Carter should be put about for so small a sum as £500 or if you can procure either of those sums you mention whatever may be the expence I shall be very happy in repaying you again I mean to dispose of several parts of my property this year and am in hopes to raise a considerable sum for Mr. Lefevre I beg you will inform me what has been done I am dear Sir

Your obliged & obedt. Servt.

J. MARSDEN.

P. S. I am much obliged to you for the Oysters they came very good."

I have here a letter from Greene to Marsden, dated Slyne, 26th October, 1797. That is a place which is two or three miles on the road to Burton. He says—

" Dear Sir,—I recd. Mr. Wright's Note saying that he had wrote to Mr Croft to come to H. Castle *this Week:* I wrote to Mr. Barrow yesterday to know for a certainty if he was come & if so I wod. meet him Mr Barrow, to morrow morning—I enclose you his answer—I am much pinched for time and therefore send over to know if Mr Croft be now at Hornby if he be & intends returning to Gargrave on Saturday I will come over tomorrow but if he stays the next week I will fix the day with Mr. Barrow to come over together

I am with Compts. to Mr. & Mrs. Wright & Miss Tatham

Your obliged & obt. Servt.

THO. GREENE

(directed)
John Marsden, Esq. Hornby Castle
In his absence to Mr. Wright."

The next is a copy of a letter from Marsden to Greene, dated Hornby Castle, 19th December, 1797, and it is in the hand-writing of Marsden. It says—

" Hornby Castle 19th Decr. 1797.

Dear Sir,—I wrote to Mr. Lefevre at Buxton saying that if it were possible to get him the seven thousand pounds he wanted I would I have been using every means in my power since I shall remit him fifteen hundred pounds part of the above sum to be ready for him to receive on the second of January. I have not sold any of my Tithes money being so scarse that it makes people very shy of purchasing although they want to have them I think in a little time they will purchase if they should I will remit the money as I receive it I must beg of you to wait upon Mr. Lefevre and acquaint him with it as I am afraid he should be inconvenienced by not receiving the whole sum I have heard nothing more from Mr. Croft he has not been here since you saw him I beg my Complts. to Mrs. Greene & the young gentleman

I am Dear Sir your much obliged hble Servant

Mr. Greene J. MARSDEN."

Now here is Mr. Greene's answer, dated Bedford Square, 30th December, 1797—

" Bedford Square 30 Decr. 1797

Dear Sir,—I duly received your Letter but I had not an opportunity of seeing Mr. Lefevre till this Morning, he took your Letter & said he wod. inclose it this post to the person from whom he has made the purchase, and hoped they would manage matters some way or other for the present I assured Mr. Lefevre he might rely on your exertions & I will answer for him he will accommodate you to the utmost of his power besides his being a particular friend & neighbour of mine you cod. not have a concern with a more considerate & honorable man.

I beg my Complts to Mr & Mrs Wright and Miss Tatham and I sincerely wish you all many happy years.

O

Digitized by Google

Mrs. Greene is gone to Edmonton to fetch back her son. I have the happiness to add they were both as well as possible.

On Monday or Tuesday next there will be at Lancaster a Barrel of Oysters directed to you by the London Waggon I ought to have given you more timely notice but I was in hopes of seeing Mr. Lefevre I am writing to Mr Park and shall request him to get them forwarded

Your much obliged hble Servt
T. GREENE"

(Addressed)
John Marsden, Esqr.

The next is a copy of a letter from Marsden to Greene, dated Hornby Castle, 26th February, 1799—

"DEAR SIR,—Two days after I wrote to you I received a Letter from Mr. Lefevre requesting the payment of the money I mentioned in my last letter to you I have inclosed a Letter to him in this for your perusal which you will please to send to him— I beg you will assist him to procure that sum for one year and I shall be happy in paying any expence he may be put to in procuring it it distresses me very much to disappoint him at this time when I the least expected it

I am &c
Dear Sir
Your obliged & obedt.
hble Servt.
J MARSDEN

Hornby Castle 26 Feby. 1799
(Addressed)
Mr. Greene."

22-3 Here is a further letter from the same to the same, dated Hornby Castle, ~~27th~~ February, 1799—

"DEAR SIR,—I received a Letter from Mr. Lefevre in October last requesting me to pay him £5,500 this month I have used every means in my power to get him that sum but without effect—I was in expectation of getting a sum of £8000 the person who was to have paid it in only gave notice the last week that he could not till the next Candlemas it was some trust money & I was happy in the idea of getting it as it might remain certain for six years—I have likewise tried to sell the great Tithes but without effect except two small farms which amounted to about three hundred pounds the sum being so small I let the purchasers keep the money till I could raise a larger sum I beg you will be so good as wait upon Mr. Lefevre and acquaint him with my situation I am determined to sell Gargrave and will procure him the money as soon as possible it distresses me very much he should be disappointed by me

I have heard nothing from Mr. Croft since you wrote to Mr. Wright. I beg my Compts to Mrs. Greene & the young Gentleman

I am Dear Sir
your much obliged
hble Servt.
J MARSDEN

Hornby Castle 22 Feby 1799
(Addressed)
Mr Greene."

Then here is a letter from Greene to Marsden, dated Bedford Square, 6th March, 1799—

"Bedford Square 6 March 1799

DEAR SIR,—I received your Letters respecting Mr. Lefevre but had not an opportunity of seeing him except meeting him on horseback just before he left town when I acquainted him with the contents of your Letters & below you have a Copy of a Letter I recd. from him this morning.

I have frequently seen Mr. Coultherst (an Attorney in this Town a relation of Mr. Coultherst of Gargrave) from him I understand that Mr. Coultherst wod. buy the Advowson of Gargrave & the last time we met I said I wod. write to you

Digitized by Google

Digitized by Google

Digitized by Google

on the subject. I think the best way wod. be for you to dispose of it. I imagine you have fixed some price in your own mind if you have not if you send me up a state of the living vizt. What Glebe and what may otherwise be the annual income. I can get the opinion of a Gentleman who makes it in some degree a profession to calculate the value of lives & livings for a Guinea or two.

I have this day received a remittance of £20 from Mr. Croft but then a great part of it or rather the whole must be paid to a Mrs. Carter Mr. Croft says that when Mr. Barrow comes the circuit matters shall be settled"

The spring circuit would begin soon after that. He then concludes—

"I am sure I do not know how or where to raise £3000 for Mr. Lefevre. My Compts to Mr. Wright I hope you have both stood the severe weather we have had stoutly

I am Dear Sir &c Your obliged & obedt Servt.

(Addressed) THO: GREENE

John Marsden, Esq Hornby Castle, Lancaster"

Here is the copy of the letter anexed—

Copy Letter from Mr. Lefevre to Mr Greene.

"Dr. Sir,—I was truly concerned to find from you the other day that Mr. Marsden had not succeeded agreeable to his wishes in procuring that part of the principal money which I had entertained sanguine hopes of receiving at this period.

If I have not £3000. of it with all dispatch I shall be put to the greatest difficulties. It is really painful to me to be pestered & to pester in this way—I must rely on your friendship & on your exertions to relieve me with that sum the anxiety I suffer on this account is not to be described.

Believe me with great regard Dr. Sir yours most truly

Winchester March 5, 1799. C. S. LEFEVRE."

Then here is the copy of a letter from Marsden to Greene, dated Hornby Castle, 18th March, 1799, containing a statement as to the living of Gargrave—

"Hornby Castle 18th. March 1799

Dear Sir,—I received your Letter and would have wrote sooner could I have got at the particulars of the living of Gargrave the following is as near a Statement of it as *I can* COLLECT I never could get any information from Mr. Croft

	£.	s.	d.			
The Glebe Land let at.....	105	0	0			
Mr Ingilby values what Mr Croft has in his possession at.....	30	0	0			
Paid for Compositions by the parishioners,.....	260	0	0			
The Surplus fees I cannot make out.....						
There will be the Interest for between two and three hundred pounds from the Leeds and Liverpool Canal say.....	10	0	0	£	s	d
				405	0	0

You will oblige me by getting the living of Gargrave calculated according to the above statement and send it to me

I mean to dispose of it as soon as possible The living of Gargrave is sequestered & Mr Wright is sequestrator he will write to you on that subject—I received a Letter from Mr. Lefevre on Saturday last requesting the payment of £3,000 I am using every exertion to procure that sum and the moment I do I will remit it—If you can by any means assist him for the present you will most essentially oblige me I thank you for your Kind enquiries I have stood the Winter very well till of late the anxiety of mind at the disappointments I have met with has a good deal impaired my health

I am Dear Sir your much obliged & obedt. Servt

Mr. Greene J MARSDEN"

Digitized by Google

Now, with respect to the statement contained in that letter, as to the living of Gargrave, I am by no means prepared to say that Marsden formed any opinion about it, but that he got somebody to calculate it and give him the information, and in all probability he copied it, without exercising his own judgment on the subject.

The next is a letter from Greene to Marsden, dated at Bedford Square, 13th May, 1799—

"Bedford Square 13th May 1799

DEAR SIR,—I sent you out of Gloucestershire the valuation made by Mr. Morgan of the living of Gargrave—"

That Mr. Morgan was for many years well known as the actuary of the Equitable Assurance Office, and would for a guinea or two make calculations where they were material and necessary. Then he says—

"If the price be such as you will be willing to take & the income be such as you stated to me I have no doubt but you may dispose of it to Mr. Coultherst as his relation has applied to me frequently about it—If you think of selling it let me know immediately as it will perhaps be very convenient to Mr. Lefevre for I cannot possibly get any money raised here

I ought sooner to have returned you Mrs. Greene & my thanks for a very fine Salmon which came very opportunely notwithstandg. I was out of Town for Mrs: Greene was going to spend a Week with some friends during my absence & the fish arriving just as she was going she took it with her where it was highly acceptable & she says a very fine one indeed

She joins me in Compts. to yourself & Mr. Wright

I am Dear Sir

Your much obliged hble Servt

THO. GREENE

P. S. After sealing this Letter I received the enclosed—I had wrote to Mr. Lefevre that I found it impossible to raise any money here unless one cod. raise any by getting some friend to sell out stock upon a Bond to replace it and that you know is a very hazardous manner of raising money because if a peace or good news come the stocks wod. of course be higher & you a considerable loser if on the contrary they shod. fall you might be a Gainer—

I hope you will be able thro' some of your friends in the Country to Raise something or other for Mr. Lefevre whom I have not seen altho' I have called four times at his house which is now in Spring Gardens—

(directed to)

John Marsden Esq Hornby Castle Lancaster"

And this is the house that Sir James Scarlett now resides in, he having improved it and added largely to what Mr. Lefevre did to it.

The next is from Greene to Marsden at Hornby Castle, dated Fordworth Court, Gloucestershire, 20th April, 1799, and franked by Lord Ducie, the member for Underedge. He says—

"Fordworth Court Gloucestershire 20th April 1799

"DEAR SIR—In consequence of your Letter I drew up an anonimous case for the opinion of Mr. Morgan as to the value of Gargrave I guessed at the age of Mr. Croft & the rest of the case was from your own statement I yesterday received the Copy of his opinion which I inclose. I beg my Complts to Mr. & Mrs. Wright & Miss Tatham.

I am Dear Sir Your obliged & obedt. Servt.

THO: GREENE.

On asking Lord Ducie to frank this he begged me to insert his complts to you

Digitized by Google

Digitized by Google

Digitized by Google

"P.S. You were so obliging to say in one of your Letters that you shod. the then next week send me a Salmon As it never came to hand I think it right to mention it lest you shod. have sent it & it shod. have been embezzled not to put you in mind of it for I wod. not have you put yourself to so much trouble as you are bountiful enough in presents without it. Mr. Lefevre was not in Town. I inclosed him your Letter

(Directed) John Marsden, Esq. Hornby Castle Lancaster"

Then here is a copy of the statement inclosed in that letter—

"M. is seized in Fee of the perpetual Advowson of H
The Incumbent is about the age of 54

It consists of Glebe Lands let at P Ann - - - - - -	105	0	0
The parsonage house and part of the Glebe occupied therewith is worth	30	0	0
Composition of Tythe paid by the parishioners - - -	260	0	0
Interest of money for Glebe Land taken into the Canal upwards of 200l.	10	0	0
Surplus Fees, &c. - - - - - - - - - - -			
	£405	0	0

Your opinion is desired what money should be required for the sale of this Advowson—

Deducting a reasonable sum for the Curates Salary the present value of the above Advowson will be two thousand eight hundred and twenty two pounds—but if the living produces after every deduction a nett annual income of 405*l.* the value of the Advowson will be three thousand one hundred and seventy five pounds.

WILL. MORGAN,

Equitable Assce. Office 10th April 1799"

The next letter is from Marsden to Greene, dated Hornby Castle, 14th May, 1799—

"Hornby Castle 14th May 1799

"Dear Sir,—I was favored with yours inclosing me Mr. Morgans valuation of Gargrave living since I recd. it I have had an application for it from a Gentleman in that part but having given Mr. Coultherst the preference I cannot treat with the other at present. I expect Mr. C. answer in the course of a week or two the price I offered it at to him was 3000 Guineas if he takes it I cannot receive the money till Candlemas next. Mr. Lefevre has wrote me a very pressing Letter saying he must pay the last of the three thousand pounds in June—I have used every exertion to procure that sum but without effect. I do not believe it possible to be procured here at this part of the year and I am realy at a loss what to do if you can procure me that sum till Candlemas next I can give you I hope sufficient security I have property to the amount of six times that sum unincumbered—the Salmon was sent from Lancaster by the Mail Coach either on the 7th or 8th of April I am sorry you did not Receive it.

I am Dr. Sir with Compts. to Mrs Greene
Your much obliged & obedt. Hble Servt.

Mr. Greene. J MARSDEN"

Then here is a letter from Marsden to Greene, dated Hornby Castle, 16th May, 1799—

"Hornby Castle 16th. May 1799

Dear Sir,—I was favoured with yours of the 13 inst. I wrote to you on the 14th. in that Letter I stated to you what I had done respecting the living of Gargrave. I saw Mr. Ingilby this morning who said Mr. Coultherst had wrote to Mr. Oliver Farrer respecting it and as soon as he has is Answer I should hear from him. I am using every exertion to raise Mr Lefevre the Money but am much afraid it will not be possible to get it here at this time of the year. If any of your friends would accommodate me with stock to the amount Mr. Lefevre wants I should be happy to Risk the chance of the times to replace it again in February next I had much rather lose a few hundred pounds then suffer the anxiety of mind I have done for

Digitized by Google

some time. I have not a doubt of raising the sum against the time your sentiments soon upon this business will very much relieve my mind I am with best respects to Mrs Greene & the young Gentleman

Dear Sir Your much obliged and obet hble servt

Mr. Greene J. MARSDEN"

Another from Marsden to Greene, dated Hornby Castle, 22nd June, 1799, says—

" Hornby Castle 22d June 1799

DEAR SIR—I have procured £1,400 which will be remitted by Mr. Dowbiggin for Mr. Lefevre either to you or Mr. Atkinson by this post I will endeavour to get the remainder as soon as it is possible it has been with very great difficulty I got this sum at present money was never known so scarce here. I hope to see you in the Country soon and am with best Respects to Mrs. Greene

Dear Sir Your much obliged Hble Servt.

J. MARSDEN.

(Addressed to) Mr. Greene"

Then here is a letter from the same to the same, dated Hornby Castle, 26th March, 1801—

" Hornby Castle 26th March 1801

DEAR SIR—In a Letter I saw from you to Mr. Wright you offered to join me in a Bond of Indemnity to him to allow Mr. Croft £50 a year in addition to what he has already allowed by the Bishop. I must beg leave to decline it as Mr Croft does not from his behaviour towards me deserve it or either can I well afford it after the amount of money I have paid for him not on account of the Law business as he alleges in all company he meets but money I have paid for the Tithes which he has received and spent by keeping up an establishment much superior to what I could do without injuring my income

I am always ready whenever all parties can agree to allow him £100 a year and the residue to be divided between you, Barrows & Myself in proportion to our respective debts but I will never give any Bond where Mr. C. is concerned as there can be no dependance upon him I am with best respects to Mrs. Greene & the young Gentleman

Dear Sir Your obliged and obedt. hble Servt.

J. MARSDEN.

Addressed to Mr. Greene."

The next is a letter from Marsden to Greene, dated Hornby Castle, 15th June, 1803—

" Hornby Castle 15th. June 1803

DEAR SIR,—I was favoured with yours of the 8th. respecting my house in the Strand on looking into the Lease I find that the Tenant was to keep it in good repair and leave it so at the expiration of the Term

I think after so long a Lease as the last and if houses advance in any proportion to other things it ought to give me fifty pounds a year."

When he here alludes to "an advance in proportion to other things" it may be observed that other things were at that time rising, and Mr. Marsden felt the buoyancy of the Hornby Castle estate, and he naturally thought the buoyancy of the other houses, such as that in the Strand, was such that they should be on the rise also. Then he goes on to say—

"If I could have a good price for it I had much rather choose to sell it then to grant so long a Lease

I am leaving home in the Morning for some weeks should you want any further information please to write to Mr. Wright and he can inform me.

Digitized by Google

Digitized by Google

Digitized by Google

It gave me great pleasure to hear you was so much recovered. I beg my respects to Mrs. Greene & your Son when you see him.

I am Dear Sir
Your most obedt. & obliged Servt
J MARSDEN

P. S. please to make my Kind respects to Lord Ducie when you see him"

Now here is a letter from Greene to Marsden, which I believe is new (handing up a copy to his lordship, and another to counsel), dated—

" Bedford Sqr. 30 Novr. 1803

" My Dear Sir—I duly received your favor of the 23d. I think your determination respecting the Mill perfectly right you say you went so far as to name your own Referee.

I shod recommend upon all references to name three each of the parties one & they to name as third & the determination of any two to be final."

I beg, however, to differ from him in that, as it is attended with very considerable expence; but the best way is to submit your case to one individual as far as justice is concerned. Then he says

" By the Manchester Talegraph I sent you the other day a Barrel of Oysters which I hope will arrive safe and good by the time this comes to hand.

I will look amongst the papers at Grays Inn for the Grant from the Duchy of the Rent. It ought to have been sent you long ago & I thought it had been sent

Mrs. Greene and Tom think themselves obliged by your rememberg them they are both well & join me in compts.

I am Dr. Sir,
Your obliged & obt. Servt.
THO. GREENE.

P. S. My compts. to Mr, Wright & recd his Box & will write to him soon.

(directed) John Marsden, Esq. Hornby Castle, Lancaster.

Here is a letter from Greene to Marsden, dated Bedford Square, 13th July, 1804—

Bedford Square, 13 July, 1804.

Dear Sir,—I wrote to you some time ago respecting the renewal of the Lease of your house in the Strand to your late Tenants upon the same terms and conditions as the old Lease and at an increase in the rent from 41—to 47. 5.—the tenant not to require of you any thing for repairs.

She wanted the Lease to be for 7. 14 or 21 at the election of the Tenant but as I remember I recommended 14 for a certainty Mr. Wright wrote an answer upon that occasion which Letter is mislaid I remember that the above rent was agreed to but I do not recollect what he said about the term. I shall therefore be obliged to you if you will favor me with directions as to the term as soon as convenient to you or Mr. Wright.

I have the pleasure to tell you that Mrs. Greene and Tom are both well, and desire their Compts to you and present mine also to Miss Tatham & Mr. & Mrs. Wright. We received two potts of Smelts very good indeed for which many thanks have been long due & I hope to give them in person in Augt. next.

I am Dear Sir
Your obliged & obt. Servt.
THO. GREENE.

Pray what is become of Croft? I have not heard or seen anything of him since we met at H. Castle

(Directed) John Marsden Esqr Hornby Castle Lancaster

Digitized by Google

This letter is reasonable evidence, Greene having been at Hornby Castle, as has been alluded to in the postscript.

Gentlemen, the last of this class of letters is from Marsden to Wright, dated Hornby Castle, 1st August, 1804—

"Hornby Castle 1st August 1804

DEAR SIR,—Your Letter came whilst I was in Yorkshire I had not an opportunity to answer it sooner. In Mr. Wrights letter to you I told him to say the Lease should be for Seven years only should you think 14 preferable you may act as you please as to that but whether of the Terms Mrs. Lambert wish to have it for it must be for the time fixed and not to be at the Ellection of the Tenant to give up when she pleases. I am happy to hear Mrs. Greene & your Son is well to whom you will make my best respects.

The Potted Smelts I know nothing of they did not come from me, on enquiry I found Mr. Wright had sent them. I hope to see you in the Country soon & am dear Sir very truly yours

J. MARSDEN

P. S. Please to bring with you the Grant of the Rent for Hornby Pryery which you purchased for me"

Now, gentlemen, I have read no less, I am told, than one hundred and sixty-two letters, and I now proceed to another part of the case. The letters between Lefevre and Mr. Marsden I do not propose to read to you. At the same time I shall produce them, because it may not be said, "We take them back or withdraw them from your view." They may be read or not as my friend thinks proper; I do not think I add to the value of the case, unless I show that Lefevre had a personal knowledge of Mr. Marsden. I have no external means of showing it, but I have this strong observation to make, namely, Mr. Lefevre is referred to Marsden by Mr. Greene, as an intimate friend of his and his attorney. Marsden is solicited by Greene to write to Lefevre a letter, and Lefevre and Greene confer together, and the substance of their conference is communicated to Marsden, and Marsden obviously, instead of seeking to keep them asunder to prevent them from communicating, is desirous to bring them together, and to make them write to each other; so as not to trouble him with a correspondence that gave to Greene, as his old friend, Mr. Lefevre as a valuable client. It at least pledges Greene to this, that Marsden was a fit and proper person to correspond with, and fit and capable of carrying on that correspondence which Greene recommended. This shews what was Greene's opinion of Mr. Marsden when the act was done. Greene brings Lefevre and Marsden to correspond together not only by letter, but sometimes by parole, as they sometimes met; and if Marsden were not the man I hold him to have been, and competent to all those acts, what would Lefevre have thought of Greene, if it turned out that he was what is now represented on the other side? Having made these observations, I now proceed to another part of the case.

Gentlemen, I have stated to you that there will be the evidence of Mr. Baron Bolland, and of many other persons personally ac-

Digitized by Google

Digitized by Google

Digitized by Google

quainted with Mr. Marsden; their evidence I will not anticipate. I do not mean to say they will be equal in number to the witnesses that may be called on the other side; but there will be about thirty gentlemen of intelligence, rank, station, and honour, whose evidence will be adduced before you; they will be persons of such honour, integrity, and truth, that no personal reproach can be cast upon them; persons who had the means of forming a judgment—and honestly forming one—their opinion will be conscientious and decisive.

But, Gentlemen, there is the testimony of one individual whom I cannot call as a witness, and whose evidence I must therefore read to you, and I do not desire that it shall be hereafter read by the officer of the court. You must hear it at some time or another; and, as far as my experience goes, the manner in which depositions are usually read by officers of court, either here or any where else, (I mean no disparagement to the gentlemen nor to the officers of this court, more than of any other court) but you will find, that in order to give an important document any weight, you must either undertake to read it yourselves, or to have it read by a party anxious to have it thoroughly understood.

The evidence of Mr. Giles Bleasdale, taken upon the occasion of his examination at York upon the former trial, is of great importance in this cause; and, therefore, however much, as you may well suppose, I am disposed to shorten the labour of this investigation, and I having had a statement to make to you of a fearful and overwhelming exertion, yet, even after all this statement, I feel called upon to read that evidence to you myself. Before I do so, I must simply state to you the circumstances under which that examination was taken. An issue was directed, as I before mentioned, by the Court of Chancery, in the course of the other proceedings in this cause. That issue was tried at the spring assizes at York in the year 1830. Mr. Bleasdale was then called as a witness, he having been the individual who prepared the will in question, and having also attested it. Mr. Procter was another witness to that will, as also Mr. Edmund Tatham, those two last being both then living, but they were not called. Mr. Bleasdale, however, was examined, and his evidence, taken by a short-hand writer, has become a record, by the circumstance of that former verdict not having been set aside by the Court of Chancery. I am therefore entitled to read it to you as evidence in this cause. Upon the last occasion, when an ejectment was tried at the assizes here, the trial proved abortive; that witness' examination was read, and constituted the whole evidence of the execution of the will. It was objected to, upon the ground that there was another of the witnesses to that will living, who could give evidence upon the subject; but I did not think myself called upon to put into the box that gentleman, the Rev. Robert Procter, the only remaining witness, Edmund Tatham, in the meantime

Digitized by Google

having died. That proceeding went against the defendant, the plaintiff having given no evidence whatever; that is to say, Admiral Tatham obtained a verdict by the admission we then made in that cause, (and which I also made on Saturday in this cause,) viz. that he was the heir-at-law, and therefore I had a right to begin. I mention that on this occasion, as some attempts have been made to represent that this is the third trial of the cause upon its merits, and that the will has been thereby established on one trial, set aside on another—that this is the third, and that this is a matter of inferior moment as to evidence, as far as your opinion is to be governed. I know not who has made the mistake in so stating it in the public prints, but it is not so. Whether those who profess to direct the public opinion have fallen into an error in saying, that the trial of last spring twelvemonths was decided upon its merits I know not, or whether Admiral Tatham himself thinks so or not I know not; but this I know, that it was not so on the last occasion, although some indiscreet friend may really believe that there have been two trials—the one determining it in one way, and the other in another—and that this is the third trial to determine the matter between the two parties. The fact however, is, that it is not so. On the last occasion, the merits of the case were not gone into on both sides—there was only one side heard. I made my statement, and gave all my evidence; but, when I came to offer the will, it was objected that the attestation of it was not proved by the living witness. Upon that, however, I rested my whole case, and declined giving any other evidence of the execution of the will than that of the examination of Mr. Bleasdale. If there was any fault upon that occasion, it was rather my fault than that of any other individual, that there was a miscarriage upon that trial; and I may be said to have occasion to lament it, as it has exceedingly added to my own labour in this matter, as I would undoutedly rather have wished it to have been settled on that occasion, and it might have been so, if they had chosen to have called that witness on the other side. Under these circumstances, Admiral Tatham obtained a verdict, solely because we acknowledge in the outset that he was heir-at-law; and it was erroneously supposed that we had not proved the will at all. The trial ended without a single witness being called for Admiral Tatham. That verdict has, however, been set aside by a *veniri de novo* having been ordered, while the first verdict was not set aside at all. I must, under these circumstances, put before you the issue that was formerly directed by the Master of the Rolls, and the verdict of the jury upon that issue.

Now, gentlemen, do not let it be supposed for a moment that I am endeavouring to say more upon that verdict than this—that it is entitled to some weight. I trust that no gentleman I address can possibly decline admitting this at once; the precise extent

Digitized by Google

Digitized by Google

Digitized by Google

it is for you to judge. That there has been but one trial of this cause upon its real merits is perfectly plain, and it was upon that trial of the issue that a jury found that the will in question was valid, as they by their verdict have established; although I state this as a fact necessary to bring under your notice, yet it is just as open to you on this occasion to find a contrary verdict, as if there had never been any trial at all—if you think that you would be justified in so doing; but I do not think that such a solemn inquiry as that was, which lasted for a considerable number of days (I believe six days), and which was conducted after some years of previous investigation, Mr. Marsden having died in the year 1826, and that trial having taken place at York, in the spring assizes of 1830. There had been a long examination of witnesses previously by a commission sitting in this town—I believe for no less than six weeks did the commission sit in this town of Lancaster to collect all manner of evidence that could be got in all directions—discarded servants, offended workmen, and every possible sort of person who had any thing to say relative to the matter were collected together, and we have the result of it given as evidence upon that trial of the issue. The event was such as I have stated, and I must therefore put that verdict in evidence in order to enable me to read Bleasdale's examination. It will not, however, allow that verdict to have any influence upon you beyond that, it is entitled to your attention with that object; and unless you see your way clearly and distinctly to a different conclusion, the party I represent will, I trust, be entitled to a similar verdict at your hands. It is for you to say what it is to be, but do not let any one imagine that I have mentioned it as in any, the slightest degree, with a view of fettering your judgments, or in inducing you to come to a similar conclusion. It is a point upon which you are to exercise your opinion; but, at the same time, it is to be looked upon as nothing more than a mere fact in the cause, (and by no means the least important fact in our view of the case,) that I present it to you.

Now, gentlemen, I come to the evidence of Mr. Bleasdale, which I shall now read to you from the transcript of the short-hand writer's notes, which have been verified as being perfectly correct, and his lordship has got a copy of them.

Mr. Giles Bleasdale, after being sworn, was examined by myself, and answered to the following effect:—

How old are you?—In my seventy-eighth year.

Are you now an attorney, or have you been an attorney?—I have not practised between ten and twenty years: perhaps a dozen years. In 1816 I think I left off.

By Park, J.—Fourteen years that is?—Yes.

By Mr. Pollock.—Were you a member of the house in London of Bleasdale, Alexander, and Holme?—I was.

Digitized by Google

Digitized by Google

half the other, that was the impression on my mind. I think he was a visiter on a long visit.

What was Henry Tatham?—I really do not know, but I think I heard that he was clerk of the peace for the county of Westmorland, and he did the business by deputy—and if so, he did no business.

Did you ever see him at Hornby Castle?—I think not: I have no remembrance of it.

Were you Mr. Marsden's attorney?—No.

What time did you retire yourself into the country?—In 1816, I think, to the best of my recollection.

How far did you live from Mr. Marsden's?—Two or three miles, perhaps three.

Did you see much of him after you came to live in the country?—Yes, a great deal; I had seen a great deal of him before. He never came to London, I think, without his coming to visit me, and we always dined together when he came to London repeatedly.

By PARK, J.—You saw him very much after you came to reside in Lancashire?—Very often indeed.

By Mr. POLLOCK.—About how often in the course of a year?—Almost every week, I think I may say.

Did you converse with him?—Intimately, I was intimately acquainted with him.

Did he ever apply to you about his will?—He did.

When did he first apply to you?—It was after the death of Mr. James Barrow, who had the misfortune to be drowned at Carlisle; it was possibly thirty years ago.

Mr. James Barrow was dead before he applied to you?—Yes.

What application did he make to you upon the subject?—He wished his will altered, and desired me to make it anew.

Did he show you any will that had been executed by him before that time?—Upon that occasion he produced a will that he had formerly made.

Did you learn by whom it was prepared?—I did.

Who was that person?—It was prepared by Mr. James Barrow, as he told me, and Mr. James Barrow was a subscribing witness to the will.

Was that will destroyed or kept?—It was destroyed at the time when the new one was executed.

Do you remember any other of the subscribing witnesses?—I think Mr. Bickersteth, of Kirkby Lonsdale, was one of the subscribing witnesses to that former will, and I think the other was then curate of Hornby.

Do you remember the name of that minister?—I rather think it was Mr. Ellershaw. I have been endeavouring to recollect, and I think it was him.

Do you remember the substance and the provisions of the will?—It began with declaring that the takers under the will should assume the name of Marsden, and take the arms of Marsden, and apply for authority for that purpose; that was the first direction in the will that I recollect.

Do you recollect who was chiefly to be benefitted by that will?—I have been endeavouring to recollect, and I think it was Mr. Anthony Lister, the father of the present Mr. Marsden.

Do you remember whether any of the family of the Tathams were benefitted by that will?—I incline to think that Mr. Harry Tatham (as they called him) was named in the will, but in what way I cannot satisfy my mind: I think he was mentioned in it, and it was from a particular circumstance that I remember that.

Digitized by Google

What was the circumstance?—It was this: that upon a subsequent occasion, in cancelling his will (for I made several, and he himself constantly cancelled them and threw them into the fire); he said, "There go the Tathams," and if it had not been for that I should not have remembered that his name was mentioned; I do remember that.

Well, upon the occasion when you were first applied to, did you make him a will?—I had little to do, as far as my memory serves, to the best of my recollection, it was merely changing the trustees the first time I made one. I believe there was a change of trustees; as it was an entailed property, it followed the outline of the former will.

Do you remember who were the subscribing witnesses to that first will?—The persons I have been naming; Mr. Bickersteth was one, I was one—I was subscribing witness to the one I made; Mr. Bickersteth was another; and I think the minister of Hornby was the third, but I am not certain; but as to myself and Bickersteth I am certain.

Now, Mr. Bleasdale, did I collect from you that you remember who were the subscribing witnesses to the will that was destroyed—the first one?—Mr. Barrow's will was witnessed by myself; I think also Mr. Bickersteth; but I think my recollection of that is imperfect, and I have no recollection as to the third—I was mistaken in what I stated first as to that one.

Did you ever make him another will?—I think it might be a few years afterwards, whether upon occasion of new trustees, or upon what occasion, I cannot charge my memory; but I made a second one on the old plan, I believe.

Do you remember who were the subscribing witnesses to the second will you made him?—I was one,—Bickersteth was another; and he held possession of the duplicate.—Mr. Bickersteth carried it home with him, and I think the former one also.

He carried home the duplicate for him to keep?—Yes.

Do you remember ever making him another will?—When he spoke to me about a further will I was dissatisfied with the plan of the former one; I followed Mr. Barrow's idea, and it did not carry conviction to my mind that it would be the best mode that could be adopted, and I am ready to state my reason.

Did you consult with a conveyancer in London?—In consequence of doubts in my mind I did consult a conveyancer in what way they could be removed.

Who was that?—Mr. Richmond, a young man I employed.

About what year was that?—That must have been pretty much about the time of my leaving London, or before.

About 1815 or 1816?—Yes.

What was the alteration that he suggested?—After a long consultation, and making himself master of the subject as much as I was myself, he suggested the idea of Mr. Wright being appointed trustee; he suggested the plan upon which the present will is drawn.

How many wills have been drawn upon that second plan suggested by Mr. Richmond?—There have been three wills upon that plan.

In all those wills was Mr. Wright made trustee?—He was.

When the new wills were made, did you always destroy the old will, or keep it?—The depository of the duplicate was desired to bring it with him, and he did so; and the moment the new wills were executed, the old one was put into the fire.

Digitized by Google

Digitized by Google

Digitized by Google

And the depository of the duplicate was called upon to give it up?—Yes, and he did so.

Did you keep the drafts of the old wills?—The draft when Wright was a trustee upon the new plan, I certainly did keep it.

Where is that draft?—Upon my word, I do not know—I thought it was here in York, and I had it with me when examined in Chancery—I thought I had left it in Lancaster—I could not find it—I searched for it, and sorry I was.

Had you it at the time you were examined in Chancery?—Yes, and I had the means of knowing the date.

Who were the subscribing witnesses to the first will made on Mr. Richmond's plan?—Mr. Edmund Tatham, of Cantsfield, one witness; Mr. Procter, the minister of Hornby, was another; and I was the third.

Was the second will attested by the same gentlemen?—It was.

Mr. Pollock.—The third is the one in question. Of whom did you receive instructions to prepare the several wills that you made?—Of Mr. Marsden, the testator, himself.

Did you ever receive any instructions upon the subject from any other person?—Never.

Do you remember once receiving some instructions from Mr. Marsden in writing?—I do remember it.

Are those the instructions? (handing a paper.)—No, that is not the paper that I meant; they are marked "instructions for the codicil."

Look at that paper again (handing it in again to the witness).

Mr. Pollock.—The exhibit alters the character and appearance of it, my lord.

Witness (examining it more minutely,)—It is the paper.

Mr. Pollock.—The exhibit at the bottom had misled him.

Witness.—That is so.

Gentlemen, you will perceive from this, that some cause of offence had arisen between Mr. Marsden and Anthony Lister, the only son of his old friend. I cannot pretend to say what it was; but that paper, in his own hand-writing, orders a codicil instead of a new will, giving the property to the son instead of giving it to the father. Then the examination goes on—

Is that the hand-writing of Mr. Marsden?—Yes.

Produced and read the following document, entitled "instructions for codicil to my will. I have lately made some purchases, which I mean to go according to my will, and I hereby revoke every thing intended for Mr. Anthony Lister, and leave it to his son, Charles John Lister; and should he marry and have a son, it is to go to his son, or to any son born in lawful wedlock, and if he die without sons, it is to go to John Marsden Wright, &c., &c. (Signed) JOHN MARSDEN."

Do you know whether John Marsden Wright was his godson?—Yes.

This is the hand-writing of Mr. Marsden? and did you, Mr. Bleasdale, receive that note from him?—Yes, I did.

Produced and read the following note—

"Hornby Castle, March 7th, 1820.—Mr. Marsden presents his best respects to Mr. Bleasdale, and if he has not wrote to London about the will, will be much obliged when he does write, to desire a duplicate to be sent of the will."

Digitized by Google

That was the note produced, and read on Saturday, I believe. Then he is asked—

Do you remember in what year it was that he gave you those instructions for the codicil?—I understood the will to be in (considering)

In what year?—Perhaps 1819. Instead of a codicil I prepared a will, leaving out Mr. Lister, thinking it indelicate that a man should discover by a codicil what he had lost. I had actually drawn the codicil, but prepared the will instead of it, thinking it a more delicate way.

Every person of feeling must perceive that, if a man choose to alter his will, it is better that the alteration should be made, not by way of codicil, but by a new will, so as not to leave the will, thereby allowing a man to know that he was once preferred, and that a material alteration was made by a codicil. Then the examination proceeds thus—

Now, about the time that these instructions were given to leave out Mr. Lister, did you happen to know whether there was any difference between Mr. Marsden and Mr. Lister?—Mr. Marsden came home out of temper with Mr. Lister, he did not explain why, and I thought it indelicate to ask why he gave me verbal instructions. I thought it was but a sudden whim, and I was in no great hurry to execute them, not choosing to ask him the cause. I was in no hurry to fulfil the order.

You thought it indelicate to ask him the cause—did you wait?—Yes; I imagined that it was a sudden whim and that it might go off; I was not in a hurry, therefore, to do that which he desired, and then it was that he gave me the written instructions.

Did you prepare a codicil or a will?—I at first prepared a codicil, but from motives of delicacy I thought it was better to make a new will and leave him out of it.

Was that ever executed?—Yes.

And the witnesses were the same?—Yes, and the duplicate also; but I should state what I have omitted.

What was that?—When I got Mr. Richmond's wills (as I may call them) Mr. Procter was the depository of the will every time.

Had you afterwards instructions to prepare that which was his last will?—I think it might be a couple of years afterwards that he told me either that he ought to forget or forgive; or that some explanation had taken place, I forget which, he desired me to restore the will to its former state.

Is that it (producing a will)?—It is.

Did you prepare that in pursuance of those instructions?—I did.

Had he explained to you the object he had in view by the will?—Yes, from time to time, whenever I made a new will, he explained his meaning to me in a way that I could not mistake—the outline, I mean.

Did you frame the will so as to give, by legal words, an effect to the meaning he had explained?—To the best of my judgment I did.

Had you frequent conversations with him upon the subject?—Mr. Marsden's memory was so very good, so much better than my own, that when he once understood how the will was to be framed and executed by him, I never heard any more of it. He had the best memory of any body I ever knew.

Did he execute that will in your presence?—He did (witness looking at it).

Digitized by Google

Digitized by Google

Digitized by Google

Look at it again.—(He did.)

Who were present at the execution of this will?—The three witnesses who attested it.

Mr. Procter, Mr. Tatham, and yourself?—Yes.

Did Mr. Marsden sign every sheet of the will?—He did, in our presence, and it was attested in his presence.

Are all the signatures here to these pages in the hand-writing of Mr. Marsden?—They are.

Gentlemen, if my memory be right, the will consists of thirteen pages. Then he is asked—

Did he put his name in the presence of the three subscribing witnesses?—He did, and we all attested it in his presence.

Was any other person present?—Nobody.

Was there a duplicate of the will?—There was.

Was that executed in the same way and at the same time?—Yes.

Both of them were originals?—Yes they were.

Is that the other? (handing a paper.)—It is the other.

Was that executed in the same manner?—Yes, at the same time, and in the same way.

Now, how were they disposed of after the execution as to custody?—Mr. Marsden put one part in a case that I saw lying there, and the other was sealed up, and given to Mr. Procter to keep.

By Park J.—He put the key of the case in his pocket, did he?—Yes, and it was found in his pocket at his death.

That question was put by the learned judge, as Mr. Sharp had deposed that the key was found in Mr. Marsden's pocket. Mr. Sharp had stated that they would find the key of the case in his breeches pocket, and there they accordingly found it, immediately after he died. Then the examination goes on—

By Mr. Pollock.—Were you there?—Yes, I described where the will would be found; that they might find the will in a case, and that the key would be found about his person in his pocket.

It appears that evidence had been given before, which enabled the judge to be aware of the fact.

Were you at the Castle when he died?—No.

How soon after his death were you there?—I think it was after the funeral that the will was enquired after; I attended the funeral, and it was immediately after I am pretty sure; we went up to the castle, and I mentioned what I knew about his will.

When you say "about his person," do you mean about his clothes?—Yes, in his pocket.

Were you present when the key was found in his breeches pocket?—A servant went up to the room in which he died, and came down with the key; in consequence of my description it was searched for, and it was found.

Was the will searched for before the funeral or after?—After the funeral, I am pretty sure.

On what occasion was that box made?—I think about the time of Mr. Richmond's advising as to the first or second will. Mr. Marsden complained about the trouble he had in opening the parcel in which his will was deposited—to open it in order to read it.

Digitized by Google

By J. PARK.—To unseal the parcel?—So I understood.

Well?—At his instance I got that made, and there is his name somewhere about it. You will find his name there, "John Marsden, Esq." upon a plate in front.

By Mr. POLLOCK.—You stated that he complained of the trouble of unsealing the packet, and you got him this case?—I did.

In your judgment at the time that will was executed was Mr. Marsden competent to execute that will?—Fully so, in my judgment—and the same as to the codicil.

(It was executed in 1825.)

There are thirteen sheets of paper—did the other subscribers as well as yourself see that he put his hand to thirteen sheets of paper?—They did.

Did you some time after prepare a codicil to that will?—Yes.

Is that it (handing it)?—Yes.

And the duplicate?—Yes.

Did you receive instructions from Mr. Marsden himself as to that will and codicil?—Yes; the history of them is this—I explained to him the nature of the will, and that there must be a codicil, and the necessity of republication, as well as I could. Upon another occasion he was anxious to understand what was their object and effect. I explained to him as to after purchased lands, that they could not pass by codicil without republication.

Did you prepare that?—I did.

Did he desire you to do so?—He did.

Did he understand it?—I have no doubt of it.

Did he execute that codicil (handing it to him)?—Yes.

Before the same witnesses?—It was.

By PARK, J.—Did you receive your instructions for the codicil from any other person but Mr. Marsden?—Never from any body but his own mouth.

Did the three witnesses to the codicil sign their names in his presence attesting the codicil?—They did.

After the execution of the codicil what was done with the two parts?—Mr. Procter was the depositor of one, and the other was put into the case.

I observe that you have stated that the same gentlemen were witnesses to the codicil, the will, and to the two former wills?—Yes, it is so.

Who selected the witnesses to those instruments?—Mr. Marsden himself.

Gentlemen, you will observe that Mr. Bleasdale was no less than seventy-years of age, and a little deaf, which accounts for the preliminary in his cross-examination.

Cross-examined by the ATTORNEY-GENERAL.—I will endeavour to make you hear me. How long have you known Mr. Wright?—For about eight or ten years after I knew Mr. Marsden. I did not know Mr. Wright till I had visited Mr. Marsden at Hornby Castle—I never had seen him.

Did you become very intimate with him?—Yes, more and more so; he has rendered me various little services—he kept a cash account for me and saved me a deal of trouble.

You got a lease of the cottage you are in?—I was very anxious to get a place in the country so as to be near some poor relations I had to come to, and it was through him I was accommodated.

How long is that ago?—Thirty years ago.

He was the means of procuring you that from Mr. Marsden?—Yes, it

Digitized by Google

Digitized by Google

Did Wright ever bring him to your office to execute a will in London?—No.

He never did?—Never.

You have a clerk of the name of Loftus?—Yes, there he sits; he is one of my successors. (Pointing that gentleman out.)

Did he ever witness a will of Mr. Marsden's?—I think not; my reason for so thinking is this—that we had clerks from the north of England constantly in the office, who, in a case like this, would be very curious, and my business was to prevent that, and I have a stationer's bill for some wills, which are at your service, if you like.

I do not want them. Had you not a clerk of the name of Tatham?—No. Not that I recollect. I beg pardon; we had one of that name.

Have you no recollection that those clerks, Tatham and Loftus, and another clerk, were witnesses to another will, executed in London?—I have no recollection of it whatever; I should be astonished if it were so.

Did you pass a great deal of time at Hornby Castle when you came to Lancaster?—I have come and staid in the house a week or ten days at a time before I came to settle.

When you did so, who was the person you generally conversed with—Was it Wright or Marsden?—I believe there were the young ladies—the Miss Wrights; although old, I am a single man.

What was the age of the young ladies?—Just springing up into womanhood.

You had sometimes the young ladies visiting the cottage?—I had two; they were at school with Dissenters. I recommended a school for them in London, and I was desirous that they should come to me on a Saturday night, and that they should go to church with me, to return on the Monday.

That was in London?—Yes.

Then they used to pass the Saturday and Sunday with you in London?—Constantly.

During all the time they were in London?—Yes, all the time.

When they returned to their parents in Lancashire, did they not alternately live with you at the cottage?—After my sister's death I was left alone, and they, out of kindness, sometimes one of them would come and bring a young female friend with her, and sometimes two; I had very often the young ladies' company. They played vastly well upon music. I got them an instrument, and they used to amuse themselves in that way.

You were upon very particular intimacy?—Yes, I was very thankful (Interrupted.)

Now come to the cash account?—There were little petty payments to make, which Wright took off my hands; he did that for several others besides me.

Had Mr. Marsden any bankers' accounts?—No, I should have wondered if he had.

What would make you wonder?—He did not like trouble: I mean in common matters;—for instance, now, if we were travelling with him, any body might be paymaster upon the road, but he would not take the trouble of it; what I am describing now were little matters, and if he had a cash account at the bankers it would have been more trouble than he liked.

Did he keep cash in Wright's possession?—Yes, a great deal was kept in the house. I did not like the trouble of those petty payments, and I got cash when I wanted it from Hornby Castle, just as Mr. Marsden did.

Digitized by Google

Digitized by Google

Digitized by Google

Wright kept your cash?—Yes, being ten miles from the bank.

You remember the failure of Worswick's bank?—Yes.

Did you lose any money?—I had promised a person a considerable loan. I had no banker. It was put into Wright's hands, and then into theirs; it was lost and I can tell you the sum.

Was it £1,500.?—More than that.

Had Marsden any money there?—I do not know the fact.

Did you never suggest at the period of Worswick's failure, that as part of the money that Wright had was in your name, and part in Marsden's, that you and Mr. Marsden should bear an equal part of the loss?—If the question arose yesterday, I should say now as I said then, that as the money was there to answer Mr. Marsden's purposes, that he should bear part of the loss. I might have said to Wright, "I did not lend the Worswick's the money, but I lent it to you."

Did you not suggest that Mr. Marsden should bear part of the loss?—I might in conversation have said that, as I felt it, but I do not know that I suggested it to him.

Do you recollect the transaction of the presentation of Mr. Lister to the vicarage of Gargrave?—No.

Do you know any thing of the disposition of the advowson?—Yes, the will gives the advowson.

Do you not recollect the matter; did you not suggest that Mr. Anthony Lister should hold the living, and should have the presentation of the living of Gargrave?—I know nothing about that.

Nothing whatever?—Nothing whatever.

Do you recollect any transaction of a bond of £2,000 being given to Wright for it?—No, I never was consulted about it.

Do you not remember meeting with Lister and Wright at the Red Lion at Settle?—I may possibly have been there, but never upon business; I think it is impossible.

In the year 1806 or 1805, do you not recollect being at the Inn at Settle along with Lister and Wright, upon the subject of arranging the presentation of Gargrave?—I never was at a meeting at Settle upon business in my life.

But you remember Mr. Lister having the rectory of Tatham?—Yes, he had.

He resigned it when John Marsden Wright came of age to hold?—Yes.

Was it not your suggestion that he should hold it and resign it when the young Wright came of age?—No, it was not.

You are sure about that?—I am sure of that. I was never present when it was mentioned; but I do know how it originated, if you want to hear it.

Yes?—Mrs. Lister, the mother, was extremely anxious about her son, and she made Mr. Marsden promise that he should go into the church, and have the living of Tatham, that was long ago, and Mr. Marsden held himself bound as a man of honour to present him to Tatham, although he had Gargrave also. "I promised it," says he, "and I will perform it."

But how came he to resign it?—I do not know.

You never did suggest that the living of Tatham should be held by the same body, till he John Marsden Wright should come of age to take it?—I have no belief upon it. I never did suggest it or believe it.

Was this the only business you ever did for Mr. Marsden, making these wills?—No, it was not.

Digitized by Google

Did you not make the conveyance of the estate he purchased in his lifetime, as a free gift to John Marsden Wright?—I did.

When was that?—It may be ten or fifteen years, but I am a bad recollector of dates.

It was called the Upper Salter?—Yes, I can give you the history of that.

First answer my question. Mr. Marsden had just bought it?—Some years before.

For £6000?—I do not know what it was.

Did you know at the time that you conveyed that estate to John Marsden Wright that Mr Marsden owed £28,000 upon mortgages?—Yes, I did. I I did not know the precise sum, but I knew he owed a large sum upon mortgage.

Was John Marsden Wright of age at that time?—He was either gone to Oxford, or about going; to the best of my recollection he was intended for the church.

Was it at your suggestion?—No, I am disposed to tell you how it arose, if you wish it.

No, but I have no objection.—Just as you please.

I have no objection to hear it.—Mr. Marsden, my lord, lamented to me in conversation that he had no living to give to John Wright when he took orders, and he expressed a strong wish in several conversations that I would put him in a way to purchase the next presentation to a living; my answer to that was, that as far as my observation went they cost a great deal more than they were worth, "but," says he, "what am I to do?" I said it was for his consideration; and after some he suggested "I could give him Salter;" upon which I said "You mean, at your death, sir?" "God bless me," says he, "how is he to live in the mean time?" and it was, therefore, at his own suggestion that Salter should be given to his godson, and he expressed satisfaction to me that it was in his power to do so at that time.

Was old Wright present at that time?—No, he knew nothing about it. When Wright knew afterwards, he expressed great surprise, and I have every reason to believe he had no idea of it at the time. It was the spontaneous idea of Marsden's own mind.

How came Mr. Marsden not to do that by his solicitors Dowbiggin and Sharp?—I could be rather excused from doing any thing of the kind, but as to his wills and codicils they were gratuitous on my part, I never charged a penny for them, but he made me a present which I expended away—you know the history of that.

How do I know the history of that?—If you wish to hear it I will tell you. My service was gratuitous in every respect.

By Justice PARK.—You gave it to Hornby chapel, did you?—No, it was laid out on that cottage.

By the ATTORNEY-GENERAL.—Now you state that when the wills were cancelled they were burnt?—Yes.

Did you keep the drafts?—With regard to the drafts of what are called Richmond's wills, I cannot tell what became of them, but I kept them out of the way, that curious clerks might not pry into them, to know how Hornby Castle was going. I sealed them up, and forgot that they existed, with Marsden's name upon the back of them.

You took instructions it writing—was it?—No, it was in pencil. I think I should have put them into the fire afterwards, as I had no motive for keeping them. I never expected any inquiry.

Digitized by Google

Digitized by Google

Digitized by Google

Did you never expect any inquiry?—Never; I can give you the history of that. I had heard a great deal about Marsden being incapable of transacting his own business, and that a commission of lunacy should be taken out against him, when he was selling Wennington Hall and buying Hornby Castle. I did not expect any inquiry of the sort. There was a good deal of talk, but I considered that I might be reflected upon, and I did that which he wished me to do.

I should have thought that was a reason for you to keep the instructions?—No, they were the loose idle talk of the country; the loose stories that I heard were idle ones. I never thought it necessary to keep them for my justification. If I had considered this as a regular business, I should have kept regular papers and accounts of it, and laid them by, but considering this was gratuitous on my part—an act of friendly feeling, I kept no memorandum whatever upon the subject.

Then you think the only occasion when a solicitor should not keep drafts of a will, or the instructions, is when they are gratuitous?—They are generally pinned to the drafts.

Now, Mr. Bleasdale, did you never state to Mr. Marsden any thing about Mrs. Lister, about her disposition?—Yes, that was my own suggestion. It never would have occured to his mind; the husband being tenant for life, it was a very common thing for him to make provision for the widow if she survived the husband, and I inquired whether I should do it.

But that is not what I mean, just attend to me—Did you never suggest to Marsden that Mrs. Lister was a proud woman and extravagant?—No.

Hear me, that if Lister were allowed to have the uncontrolled disposition of the estate it would go to ruin?—No, never any thing of the sort. If you should ask me my private opinion I should decline giving it: it is no concern of mine.

I do not ask you for your private opinion here—did you not state that opinion to Mr. Marsden?—No.

You never did?—No.

You see Mr. Lister, the tenant for life, has not the least power nor control over any part of the estate for twenty one years to come, by that will?—In order to accomplish the great end that was in view, I did not see how it could be done in any other shape than it was done.

What was the great end in view?—To make provision for the payment of the mortgage and legacies, it was thought necessary that a large power should be given to some persons as trustees, and if they and Mr. Lister should differ in opinion as to what was to be done or what would be the consequence, therefore it was done.

Therefore you thought it best that the whole should be given to Wright?—Yes; Marsden said he had perfect confidence in Wright.

Lister had other children?—Yes.

A son and two daughters?—I believe so.

Did you know the eldest boy, to whom the remainder is given?—No, I never saw him in my life, that I know of.

Did you not talk to Marsden about the singularity of giving the remainder to his son?—No, I never in my practice in my life gave any intimation or opinion as to how a man should dispose of his property, or as to who should be the objects of his bounty, but only as to the law upon the subject.

You say that Marsden had one of the best memories you ever knew?—Yes, he was appealed to upon all occasions.

Digitized by Google

What did you think of his mind, was it a weak mind?—I think the world had not done him justice, otherwise I was deceived.

You had a better opinion of him than other people had?—I saw more of him.

Only one other question. You have spoken of those instructions to make the codicil?—Yes.

How long had you those instructions before you acted upon them?—I will endeavour to recollect as well as I can; it might be a few weeks, but I am uncertain as to that. I believe my thought was that it was a whim, and that he might repent, and not till then that I should act upon them.

As you were very intimate with Wright had you been apprised that Wright and Lister had quarrelled?—I never knew from Wright then, nor at any time why it was that he was dissatisfied. I remember once saying that I thought Marsden had been affronted at some slight shown him; he was of a different opinion, and there it ended.

Did you never know that Wright and Lister had quarrelled?—All that I recollect upon the subject is, that Lister thought Wright had made him a hard bargain, and was out of humour with him, and that was all that I knew of it.

Wright had purchased for him Wennington Hall?—Yes; and Mr. Lister's friends thought he had given too much for it.

Did you not learn from Wright that Lister had charged him with defrauding him?—No, never.

Was it not at that period that you heard of that instruction, that you received those instructions about the codicil?—I think it was very likely it was—but that I guess only.

Do you know that Mr. Marsden refused to speak to those persons that Wright was offended with?—No, I do not know if they had given him offence; there was that sincerity about him, if he promised to be a man's friend, he shewed that he continued to be so. I never went there that he did not give me the most pressing invitation to see him again.

Now, gentlemen, this is Mr. Bleasdale's evidence. Who he was you will perhaps learn from those who knew him well; he has not been long dead. It turned out that I, as counsel for Mr. Lister Marsden, did not choose to call the Rev. Robert Procter, one of the subscribing witnesses. Admiral Tatham, as he thought very properly for himself, waited till Mr. Bleasdale were dead, and then he brought an action of ejectment. After the verdict on the trial of the issue there was an application for a new trial; the Master of the Rolls gave his opinion, and then there was an appeal to the Lord Chancellor, assisted by Lord Lyndhurst, and Chief Justice Tindal, who concurred in the decision, refusing a new trial. If Mr. Bleasdale had not died, but had lived, with the possession of his faculties, down to the present hour, I should not have troubled you this day with reading his evidence, as he would then have repeated that evidence himself. On the last occasion an objection was made to my producing and reading the will, as it was insisted that I should put Mr. Procter into the box. I refused to call Mr. Procter into the box; and one of the earliest observations that will be made by my learned friend will now be

Digitized by Google

Digitized by Google

Digitized by Google

upon that subject. That Mr. Procter had been a witness to no less than three wills, and he had also been, in some instances, the depositary of the will. We, however, declined calling Mr. Procter, for reasons which I need not explain; and Mr. Procter not being called, I have only to make a remark or two upon the subject. This is not a question, (as was well observed in the Court of Chancery, when judgment was given,) of a formal and due execution of a will upon the particular day when the execution was dated; but the question is generally, whether this will be his will or not, or whether Mr. Marsden was competent to execute a will? Was this not a matter of great importance? My learned friend will not magnify it into any. Mr. Procter, if called by me, must either say, "Mr. Marsden was perfectly competent, as I not only saw him execute that will, but I saw him execute three others, and I became the depositary of them from time to time; and I was positive he was competent to execute that will, or any other;" or he may say, "he was competent to do many things; but I think this was a very complicated will, and therefore I doubt whether he understood that one, from its being of so complicated a nature." If so, I should say that that was an odd sort of evasion. I should still ask him, "then why did you allow him to execute it?" Mr. Procter may perhaps go a step further and say, "I knew he was utterly incompetent, but I put my name to that will, in order to prevent any other person, either of more or less respectability, doing so, and to prevent the execution of any other will. I was determined that he should not do so, and therefore I attested it, to prevent that occurring; it was on that account I signed it as a witness:" if so, I should say to Mr. Procter, "you are a villain, if you did so." But, gentlemen, it is sufficient that I know enough of him to refuse calling him. There is no sort of reproach, disgust, or indignation, which must not be excited against Mr. Procter's conduct in putting his name to three wills, time after time, from 1796 down to his death, if such were his opinion.

Gentlemen, I will now state the terms of the will itself, but, in doing so, I shall only shortly advert to it. It is said that the object of Mr. Wright, throughout a great portion of this long period of sixty-eight years (for that was the time during which Mr. Marsden lived) was finally to get a will established in his, Wright's, own favour! A more strange romance never emanated from the most fertile brain of any poet or novelist. All this was done to let in Wright to have a power over the property in question; if that were so, it is singularly constructed for its object. The first thing he does is to leave £6000 to John Marsden Wright, his godson; £5000 to Margaret Wright, his goddaughter—to none of the rest of Wright's children does he leave a farthing. I do not know if it be within your experience (for perhaps the custom is partly wearing out,) but I know that in olden time the selection of godfather and godchild in the country, amongst old people, was one

Digitized by Google

which was considered of much more consequence, and estimated more strictly, than it is now in London, or in any great city in modern times; instances of that are not unfrequent. The next clause in the will is a ratification, or confirmation, of the gift of Upper Salter (that estate which Bleasdale spoke of) to John Marsden Wright, his heirs and assigns. Then all his personal estate goes to George Wright in trust, to pay expences, debts, and legacies. Hitherto, these provisions are in favour only of the son and daughter of Mr. Wright, who were the god-children of Marsden. I believe that Marsden's personal estate of every kind was proved under £7,000. Admiral Tatham entered his caveat (as I mentioned on Saturday,) before Mr. Marsden's body was cold in the sheets whereon he died; but he had never thought fit to contest Marsden's capacity to make a will till then; he, in spite of his caveat, has never thought fit to contest that will in the ecclesiastical court. Although he were as much the next of kin as heir-at-law, yet he did not contend in the ecclesiastical court as to the personalty; but we are here, on this occasion, settling his rights merely as heir-at-law. Then he gives the advowson of Gargrave to John Marsden Wright, his heirs and assigns. The next item I shall notice in the will is a devise of all his lands, of every sort, to George Wright, his heirs and assigns, as trustee. You will easily conceive why this is. Mr. Marsden desired that Wright should be trustee, in order that he, Wright, should continue the scheme of improvement that had been adopted by him, and had been successfully executed for many years. He desired to have a fund to pay off the legacies and incumbrances at some specific period, so as to put it into the possession of the gentleman who was to enjoy it, so that it might be unincumbered by the amount of large mortgages with which it was then burthened. He therefore limited the trust to twenty-one years, and directed a certain portion of the rents to be applied to the payment of the mortgages. Then he provides that Wright was to have £1000 a year during his life, and the residue (exclusive of all sums due to him, and disbursements in performance of the trusts of the will) the present Anthony Lister Marsden was to enjoy, upon giving up the rectory of Gargrave.

The next clause I shall notice in the will is a power given to George Wright to pull down messuages, excepting Hornby Castle and the offices, and to erect new messuages, and also lodges or offices to be annexed to Hornby Castle. Under this exception, Hornby Castle, and the immediate demesne, was given to the tenant for life. Anthony Lister Marsden was to live upon it, after deducting the sum mentioned as in the receipt of the trustee, so that Lister Marsden would have more income than the deceased John Marsden himself ever spent. If you take the rent of the estate at the time Mr. Marsden died, (whatever may be said as to his taking a fruitless inheritance as it is at present) Mr.

Digitized by Google

Digitized by Google

Digitized by Google

Lister Marsden would have taken more than double all that Marsden was ever in the habit of spending in the course of a year during which he lived. It was next provided that the estate was to be thus managed during the term of twenty one years, and that would of course expire in the year 1847, after which time the estate would be totally unincumbered by that trust; at all events, Charles John Marsden who was ultimately preferred to the father would have the full and complete benefit (and not the trustee) of the estate unincumbered, so that it was more important for him to have it as it would then produce a large income. That seems to have been the object of John Marsden and which was to be attained by this will.

There is also an item in this will by which £2,000 were to be set apart and appropriated as a fund to liquidate the mortgages, and other incumbrances so as to improve the estate and to make sales if necessary; of course it would be expected that the legatees would not wait for their legacies; but it was observed if you take £2,000 from the income, what would you leave for Mr. Lister Marsden? It is, however, to be recollected that there were £28,000 out upon mortgage, the interest of which would be to be paid, and when these incumbrances were paid off, that would make no alteration of the estate, but there it would be where it was. It is in reality taking from the income of the tenant for life only about £800 a year as a sinking fund for twenty one years, which would go to secure the ultimate payment of that amount. Gentlemen, you will be aware that if you allow a sum of money to remain for fourteen years, and annually yeilding five per cent, you actually realize the principal of that sum, so in this case, even at a small per centage, in twenty years you would realize the amount by the £800 being so laid out for twenty one years; it would probably operate in that way. Those sums would accumulate, and go on at compound interest so as to get rid of the mortgages even before the trust expired. There was therefore £2,000 to be appropriated to relieve the land from incumbrances, and £1,000 a year to be paid to Mr. Wright for his services during his life only—and you will observe that at that time Wright was by no means a young man, his acquaintance with Marsden appears to have commenced in 1799; that was the period when they first became acquainted with each other—Mr. Wright being now about seventy-eight years of age. I do not think that the sum of £1,000 is a very large sum to be allowed him for such beneficial management. If we had applied to that gentleman whom we have heard of in some of the letters of Mr. Marsden as being in the habit of giving opinions for a guinea in such cases, I dare say we should have found he would not have supposed that such an annuity would have been worth much. Then the remainder was to be accounted for to the person who was ultimately to be entitled to the residue. Then there is a power to raise £1,000 for the

Digitized by Google

younger children of the devisees; from that I suppose Mr. Lister Marsden was to have the power to give to his younger children and his daughters £1,000 a piece. There was also the usual power to sell and exchange, and a power to substitute a manager if Wright became infirm or did not wish to continue the trust. If he then substituted another, there was £400 a year provided for him; and the person who was to undertake it was to reside in the Castle twenty one years; and then it was to go to Lister Marsden for life, to Charles John Marsden for life, and on the failure of issue male, then the remainder to John Marsden Wright in fee.

Gentlemen, at the trial at York, I did not see my young friend whom I have just now alluded to, and who now sits here. I am sorry to say I understand his mother at this moment lies dangerously ill, but I must observe that whether she were proud and expensive will not be matter of enquiry here; all that I meant to allude to now was that this young gentleman was not at York during the trial there. An insinuation was thrown out that he was a sickly lad, and, therefore, was the person selected to be beneficially interested in this will, in order to give to George Wright the possible reversion. Gentlemen, such alleged weakness might possibly arise in the case of aged fathers or of dying mothers, but I must say that the last time this young gentlemen was here on the occasion of the trial, no individual could present a more healthy appearance, nor could entertain better prospects of a long and happy life. Be that as it may, however, *that* is the *will*, and my friend has no doubt now, as he had formerly, a great many comments to make upon it. I own to me, the object of it, in so far as it concerns Wright, appears to be this—Wright gets £1000 a-year, and some of his family are benefitted under it, by having certain legacies left them, all those legacies were put forward in the van, so that there was evidently no intention whatever to conceal them. If Wright managed these too, amongst other matters, and had meant to conceal what was provided for his family, he, instead of putting his candle in a bushel, has stuck it upon a wall. These are all the observations I mean to make upon this will: but it shall by and bye be read, so that you will be able to form your own judgment upon it.

Now, Gentlemen, as to what is to be the sort of defence on the other side, I may partly anticipate; but I shall say very little about it. I shall leave it to my learned friend to prove his defence, whatever it may be. I shall only say this—that I am strongly inclined to suspect that his case will be supported by a very different class of persons from those whom I have already presented to your notice, each of whom are persons of high character and respectability, as evinced in those letters which have been read, although many of those persons are gone to their great account, so to that I cannot call them, but they were persons whose acts still live and speak volumes in support of this will.

Digitized by Google

Digitized by Google

Digitized by Google

There is one witness as to whom I may here speak a word or two; I mean Dr. Lingard, who, having been called before, may be called again on the other side; but, however much he may be distinguished for learning and literature from his being the author of a history which has been read by many with satisfaction and improvement, I confess I do not think that a gentleman of his habits is able to judge so well as any ordinary man of business, in regard to the capacity of the late Mr. Marsden. They differed so widely in some particulars, and Mr. Marsden was so violent in politics, as well as being somewhat a bigot in religion, and devoted to Toryism, that you must take that fact and attribute it as the cause of their difference of opinion. Marsden, knowing that Dr. Lingard was of particular views, both in politics and religion, differing from his own, he did not receive him with that courtesy with which he received others. You see that one cause of these differences was this;—Mr. Marsden was a bigot in religion, and probably had but little toleration for the faith which Dr. Lingard sincerely professes—he being, I believe, of the Roman Catholic persuasion, and, as a man of learning, one of its brightest ornaments. But when you consider that Mr. Marsden detested his politics and abhorred his religion, I think it is not much to be wondered at, that Dr. Lingard, from his reception at that table, which was open to all around, was led to form such an opinion as to Marsden's faculties, as he is inclined to state. But, gentlemen, you are at the same time to consider, as you will find it proved, that Mr. Marsden was but badly educated. His letters however, when compared with those of Charles Tatham, may be looked upon as very decent compositions; you will certainly find that he expresses himself quite as well as that other person. I am not quite sure that Admiral Tatham's education has been much better than either the one or the other of them; but Marsden was a man of shy manners, labouring under short-sightedness, which naturally gave rise to a particular and peculiar aspect. He wore spectacles, as you find from one of the letters of Mr. Greene, where it appears he sent down spectacles for him. In the latter part of his life, and when age came upon him, he was also much addicted to stooping, and had an aspect ill calculated to give the idea of a lively disposition, or an intelligent mind; on the contrary, it created an idea that he was a person of a lazy, indolent disposition, or one of whom you could not form a just opinion at all; but still, gentlemen, amongst those who actually knew him, and knew him intimately, he was perfectly the reverse. I shall produce plenty of witnesses to show that he was considered, in the first place, to be endued with the highest honour, and the purest spirit of a gentleman, acting to all around him with a delicacy of feeling, mingled with a great care, anxiety, and regard, to study the interests and feelings of others. Some of those letters have already been read to you, and from those,

Digitized by Google

and the parole evidence which you will hear, it will be found, that nothing could exceed his hospitality, his candour, his personal honour, his fidelity to his promises, and his general benevolence to every one around him. When these qualities are contrasted with the stern, severe, abrupt manners of Mr. Wright himself, (for that, I acknowledge, is Wright's character, as you shall have it by and bye from the witnesses) you may easily imagine how that contrast may have struck various individuals, and may have made them imagine he was under the controul of Wright, to whom he had delegated the management of his affairs. You will be told by some, that Wright is a man who looks shrewdly and sharply after those whom he employs in matters of business. It may be said, that the mere circumstance of the stern and rigid discharge of his duty, has created for him more enemies than generally fall to the lot of others. Gentlemen, you will, perhaps, from this single fact of Wright's peculiarly stern and austere disposition, be able to discover what may be considered as a clue to the whole history of the evidence to be adduced on the other side, in this cause. These are matters which you will learn from the witnesses, and I therefore pass on to one or two other considerations, before I come to a conclusion of the statement of our case.

Gentlemen, I now beg to call your attention to some of the evidence I stated to you on Saturday, and that which I have presented to you to-day. There is, in the first place, the testimony of the eldest brother of Mr. Marsden, who died under circumstances I shall not repeat; but who, by his own act of leaving unprotected John Marsden, the testator, has left the strongest voucher of his opinion of his competency to conduct his own affairs. There are deeds that have been executed by Mr. John Marsden, far beyond what falls to the lot of any man to attend to; they are of a varied and complicated nature, from the sort of transactions to which they are applied; they involve the character, conduct, opinion, and judgment of not less than one hundred and fifty different individuals. I have had a list of them prepared, but I shall not now stop to press that point upon you again. There is also, in addition to this, a matter which I shall now mention to you: there are some presentations of livings by Mr. Marsden, and there is his signature and seal put to the necessary documents,—but I will not take up your time now by calling for them, and pointing out their importance; but two or three of them relate to the chapelry of Hornby; and once or twice, as to the living of Tatham, did he present to the bishop of the diocess a candidate to that living; one of them was the Reverend Robert Procter himself,—the very witness to his will—and yet I am to be taunted with that, and told that these presentations are not properly sanctioned by his signature and seal, and that, too, by the very man who permitted Marsden to put his seal to the solemn act of a christian, presenting that very individual to the bishop, an individual, who, according to his sta-

Digitized by Google

Digitized by Google

Digitized by Google

tion in society, was a clerk in orders, and to be promoted to the benefice, as Mr. Procter took that very presentation to the bishop, and got inducted to the chapelry. Gentlemen, I say again, in spite of the sneers of any one—in spite of the smiles of one, or the frowns of another—I say that I cannot successfully be taunted for not calling Mr. Procter, when I have Mr. Procter taking the benefit to be derived from the hand-writing and the seal of Mr. Marsden—Mr. Procter, a clergyman, a christian, and a man asking the bishop, upon that man's name and seal, to give him the cure of some hundreds of souls. I will show you those appointments or presentations, to the amount of five or six; and I have, in addition to all this, the statement which was made before the proceedings as to the fine which was levied by Mr. Marsden, not in person, but in the affidavit of Mr. Baldwin, of this town of Lancaster, that Marsden who was a party to it was of sane mind, in the language and form without which that fine could not have passed.

Gentlemen, I have all these witnesses to the acts of Mr. Marsden through the long course of 50 years; but there are two witnesses to whose conduct and career I cannot close my observations without calling your attention:—the first is Mr. Henry Tatham. I beg to call your attention to the condition in which he was placed. Was there an intention in Mr. Wright to deceive in these matters, and are we to be told that, in the years 1791 and 1793, or four or five years before Henry Tatham died, Wright conceived the project to keep out Admiral Tatham from intercourse and intimacy with Marsden? At that moment, the then heir-at-law was living in the house. William was dead at that time, I believe—at least such is my impression. (This was denied on the other side.) Be that as it may, I care not—the argument is the same; had they heard from the plaintiff? Did they write to him? Did they get a power of attorney to act for him? Who was in the house? Harry Tatham, the lawyer, was living from 1780 to 1793, a period of thirteen years, and for four years living in the village; and there he died; and then we found Marsden in possession of the property, and yet no complaint was made by any body. Now, gentlemen, I say that, if Mr. Wright or any body, had contemplated a scheme at that time which was to throw any doubt upon these letters and deeds of Marsden, how came Harry Tatham to be living in the family all this time? How came Miss Tatham, their cousin, and the nearest relation of the Marsdens, to be living there till 1809? But, gentlemen, that is not all; I have Admiral Tatham living in the neighbourhood at the time. I may put this circumstance then, with great safety, first and foremost in the ranks of those who are to support this will,—and why do I say that? Certainly, Admiral Tatham at least was one of the next of kin from the first moment that Mr. Marsden took possession of the estates. Harry Tatham, the lawyer, was not likely to be ignorant

Digitized by Google

of his rights. Now, what would have been the consequence if a commission of lunacy had been issued against Marsden, and, if one could have been issued, it ought to have been issued, because I shall presently call your attention to the strange state of titles, if Admiral Tatham were to permit a gentleman going on through a period of fifty years, dealing with property to the amount of £200,000 or £300,000, and yet say he cannot manage such property, nor dispose of it.

Now, as to the commission of lunacy. Had a commission been taken out, the custody of the person of the lunatic would have been given, of course, to the next of kin—not to the heir, but the committee of the estate would have been the heir-at-law himself. He would have taken care of the estate, and would have handed over to the committee of the person just so much as was necessary for the comfortable maintenance of the lunatic, and the rest would have accumulated, as the personal estate to be divided amongst the Tathams, for they were entitled to the whole of it. When I find Harry Tatham living in the house down to 1793, and Miss Tatham, as near a relation as Lister Marsden (if not nearer); when I find all this, and when Marsden is allowed to go on dealing with all the world, I ask how they came to be slumbering over their rights? What am I to conclude from all this? Is there no benefit to the heir-at-law to have had the charge of the estate? I dare say there would not have been such a struggle by him, if it were worth nothing, even if there had been another appointed committee of the person. There would not perhaps have been such a struggle as there generally is, if a man be scarcely worth any thing; but is there nothing in saving up the surplus from year to year, so that whenever the unfortunate person, the object of the commission, ceases to live, the whole of those profits would have been divided amongst the whole of these persons—the Admiral, Henry, William, and Charles? Charles died in America, Henry died in 1797; and the Admiral, ever since 1798, has been, by this mode of reasoning, entitled to the whole of it, and even long before that; even for ten or fifteen years he was entitled to one half of it—the Admiral never having made the slightest movement, and why? Because he dared not; he knew that if an inquiry had taken place, and Marsden had been brought before a jury—if the cloud upon his brow had been dispelled, and the fumbling gait of the old man had been removed—if the jury had put questions to him, and had asked him what he was about, Admiral Tatham knew perfectly well that that commission would not have succeeded. But, gentlemen, why should I speak merely as to its being for Admiral Tatham's interest? I say it was his bounden duty, and I ask to whom that duty was owing? I answer, "to all the world," for, gentlemen, I say, and I call your attention to this extraordinary state of things, if the story of the plaintiff is to be believed, it is true the Admiral has brought

Digitized by Google

Digitized by Google

Digitized by Google

an action of ejectment as to Hornby Castle, but there is nothing to prevent him bringing an action of ejectment, even now, for Wennington Hall; that is according to law—if he choose, he may make his election, and therefore he travels down here to see which of those places is most convenient. I say he has a right to do both, he may carve out as he pleases. If he like Wennington Hall as well as Hornby Castle, he has a right to have one as much as the other; it is a fact throughout this trial (and this is the key to it) that the conduct of Admiral Tatham himself is to be taken into consideration. Admiral Tatham has a right to go to Wennington Hall, and to say to the present possessor "there is my ejectment—go out."

SIR JAMES SCARLETT.—I differ from you *toto cælo*.

ATTORNEY-GENERAL.—My friend has been at last aroused into a contradiction of what I now state; but, gentlemen, I state broadly that that is the law.

SIR JAMES SCARLETT.—I say it is otherwise.

ATTORNEY-GENERAL.—Then we will try.

GURNEY, B.—You have enough to try without that—one case is enough to try at a time.

SIR JAMES SCARLETT.—My friend states these things for the purpose of exciting a prejudice.

ATTORNEY-GENERAL.—No, I do not state them for the purpose of exciting a prejudice, but merely in order to put you, gentlemen, in possession of what you are to try. If Mr. Marsden were *non compos mentis*, and incapable of parting with Wennington Hall, and if there has been no adverse possession against Admiral Tatham; I say, if Marsden were a born idiot, incapable of transacting his own affairs, and incompetent to make a will at any time, the heir-at-law has a right to claim Wennington Hall. Suppose Marsden, after he had sold Wennington Hall, had spent the money, so as to have left no property, and had had no personal property at all, what would have been then said? Does my friend mean to say, that a person of non-sane memory has a right to sell the family estate, and make ducks and drakes of the money? Certainly not; Admiral Tatham would say this—"Henry Marsden died in 1780, and there came into possession, in 1780, a person of non-sane mind and memory, and totally incapable of transferring the estate; he has lived to the age of sixty-eight years, and while he lived it was his. It is true I took out no commission against him; he continued to be in possession up to the time he died, and his act in transferring the estate, and the parchment by which he did it, was no more than, as it were, a piece of waste paper." I say again, that, at all events, if that argument do not apply at the distance of fifty-four years, (but it is not so much; it was sold in 1787, or thereabouts,) it would apply to fifty years, if, by God's providence, Marsden lived so long; but the practicable argument is the same. What right has

Digitized by Google

the heir-at-law to leave some purchaser to the mercy of some party by and by, and to shew that the person who sold the estate was of non-sane memory? But there is another matter which I again urge upon your attention. I say that all the sales which have taken place (unless it could be said that the man who has the estate cannot sell it to others) are valid; otherwise, why does he sell it to the mortgagees? These mortgages have been created by Marsden himself; they are not old incumbrances upon the estate, and therefore capable of being enforced; they are created directly by Marsden, an old gentleman when he came into the enjoyment of Hornby Castle; they are equally charges upon the property effected by him. Does Admiral Tatham mean to say that it is the part of a good member of society, who intends to act fairly, to permit Marsden to mortgage the estate, for instance, to Mr. York, the late high sheriff of the county, for £15,000? I do not know how that can be reconciled with common honesty. Perhaps my friend may say, "We mean to pay that;" if so, I answer, "I am obliged to you for saying so," but we have no mode of compelling him. Admiral Tatham would be there, and Mr. York will in vain say to him, "give me that estate, as it was mortgaged to me by Marsden." Then Admiral Tatham would answer, "Why did you go and deal with Marsden?" Equity will not help us, and the law cannot assist us, if the law be so. I may say to Admiral Tatham, "Why did you put any one in such peril? you knew that Hornby Castle was bought at a large price—larger than Marsden had possessed, and but for the mortgages no loss would have been sustained." Then it would be said, "Why did you allow persons to be put in peril in regard to this title—why did you not adopt proceedings at the proper time?" It was for this reason that Admiral Tatham dared not raise such an inquiry during Marsden's life.

Of all men living, I think Admiral Tatham is about the last who ought to dispute the will; for, with the most perfect knowledge, or with the power of having intimate means of knowing the state of the family—his cousins living there for twenty-nine years, and others living there at different periods, from whom he could have learnt every circumstance connected with the family,—he has permitted this man to act for fifty years, in all occurrences of life, that this case might afterwards be laid before you. This is not a question of prejudice; but it is a question whether a man shall be allowed to uphold another for fifty years, and, at the close of his life, say—"I did not like to adopt measures of that nature, lest it should have turned out that he was of sound mind, for in that case I should have offended him. I considered my case hopeless during his life, the more especially, as, after all, I knew I could have an *Inquisitio post mortem*, and that I could institute proceedings of another nature when he died." On the contrary, is not that the strongest tribute to Marsden's capacity? If it be intended that

Digitized by Google

Digitized by Google

Digitized by Google

some effect should be given to a series of acts of the most striking and important character, vouched for by the living testimony of all that time has left us—vouched for by the testimony of scores and scores that have gone to the grave; if there be any security to be given to those acts by their being established, then, I think, by your verdict, you must establish the will of Mr. Marsden.

GURNEY, B.—Do you now call your witnesses?

ATTORNEY-GENERAL.—Yes, my lord. We had intended, first, to examine Mr. Sharp, but, as it is now so late in the day, and he is so ill, perhaps your lordship will allow us to call Mr. John Taylor Wilson in the first place.

Digitized by Google

EVIDENCE FOR DEFENDANT.

Mr. John Taylor Wilson sworn.—Examined by Mr. Sergeant ATCHERLEY.—Mr. Wilson, I believe you are an attorney in the town of Lancaster?—I am.

Did you know the late Mr. Marsden?—I knew Mr. John Marsden very well.

Were you at school with him?—I was at Lancaster school with him.

About how old was he when you were at school with him?—He was about fourteen; perhaps, I am not quite certain.

How long were you with him at school?—I think he was but a short time at Lancaster school—perhaps six months.

Did he or you leave school first?—I think he did.

When first after he left school did you see him again?—I did not see him for five years I dare say; I am not quite certain. He went to Weybridge in Surrey.

Where was it you saw him after he left school?—The next time I saw him he came to the office where I was clerk. I served the latter part of my clerkship with Mr. Fletcher; he came with Wright to borrow some money, and to employ Mr. Fletcher in some business.

Did he on that occasion see you?—Yes.

What passed?—He recognized me as an old schoolfellow, and was very glad to see me. He was very much improved in manners and conversation from what he was when I saw him at Lancaster school.

After that time when did you see him next?—Mr. Fletcher had an action in hand for him, and I saw them once or twice at our office, and once or twice at Wennington Hall; several times at Wennington Hall. The action was about the right of getting stones.

How often did you see him after you saw him at Fletcher's office before you went to London?—I should say half a score of times, or better.

Did you go to London along with him?—Yes. I was going to Bleasdale's office in London, and he sent a message that he was going to London shortly. I believe Wright brought me a message that he was going to London, and he should be happy to give me a seat in his carriage.

A carriage and four I believe?—Yes.

Who were of the party?—Mr. Marsden, Mrs. Cookson, and Admiral Tatham's brother Henry, and Mr Wright and myself.

Did you see much of him in London?—No, I did not. He lodged in Leicester Fields, and I was in the city. I was in Mr. Bleasdale's office. I supped with him once or twice.

And you were in London two years?—Yes.

And then returned to Lancaster again?—Yes.

When did you go to London?—In the year 1784, and came back in 1786 or 1788, at the contested election in April.

When you returned to Lancaster were you in the habit of seeing him again?—Yes.

Was that at Wennington, or Lancaster, or elsewhere?—I first met him in Lancaster.

Did you often go to Wennington?—I went several times, when that action was brought. He invited me to call whenever I could.

Did you continue to know him till the time of his death?—Yes, I visited at the Castle, when I went to that neighbourhood.

Digitized by Google

Digitized by Google

Digitized by Google

Have you ever met parties there?—I had been very infirm, and never was there in any particular party or large party but once or twice; I have frequently dined *en famille* with them.

Do you remember Wright's marrying?—Yes, I remember the fact, but not the time.

After he married, who sat at the top of the table?—Mrs. Wright.

Who at the bottom?—Mr. Wright generally sat at the bottom during dinner time, when he got up, and Mr. Marsden took his place. Mr. Wright generally sat close to him at dinner.

Was Mr. Marsden fond of carving?—No, I never saw him carve that I remember.

Did you converse with him?—Frequently.

On what topics did you principally converse—upon any one more than another?—Principally about battles by sea and land, there being a great deal of war during those years. He was a very loyal man.

He was fond of politics?—Yes, he was; he was on the tory side; he was a loyal, patriotic, charitable, and good man indeed.

Did he at all interfere in the local politics of Lancaster during the elections?—Yes, he generally took the part of Colonel Cawthorne; they were very intimate.

Did you ever see him at the head of any voters?—Yes, I have seen him several times at the head of the voters, bringing them up into the town.

What was your judgment as to his capacity?—His mental powers were below the common standard of human intellect.

How was he at school?—He was a slow boy; rather slow at school, but I did not see much of him; he did not mix much with the boys; he sat on a bench near the master; I saw most of him after school hours to talk with him; his mother and father and my father used to live near neighbours; I used to go home with him and play with him.

What books did he read when you were there?—I cannot say.

What were his manners?—His manners were exceedingly polite; when he got into the world he was exceedingly polite and gentlemanly, but when he was a boy he romped and played like other boys when at school, but he did not mix much with the boys.

How was he as to being a forward or shy boy?—He was backward; he was rather a shy and retiring lad, but very friendly to me always, and to most of his particular friends.

Was there any thing peculiar as to his sight?—He was near sighted; when he came into a room, like most short-sighted people, he had a difficulty to see; there were rather some contortions of the face.

Have you ever known him play at whist with you?—Yes, we played at whist most on the way to London in his carriage and four; I was very loath to displease him; I would rather have been outside as I had never seen the country before; I, however, took my turn. They had a cloth and spread it in the carriage, upon which we played cards.

Do you know if he were fond of music?—I understood he was very fond of music but I never heard him play. I know nothing of it but by the ear. I know when a tune pleases me or not.

Can you tell us the names of any of those you met at Hornby Castle?—I remember dining there with Mr. Gillison Bell, of Melling Hall, and Mr. North, of Thurland Castle, and a great number of the clergy and re-

Digitized by Google

spectable people in the neighbourhood; I have seen the clergyman of Hornby, Mr. Procter, frequently there, and Mr. Nelson, the clergyman, of Kellet, but then of Gressingham.

Was grace said either before or after dinner?—Mr. Marsden generally said grace after dinner himself.

Did you ever go with him to church?—Never but once I think, and that was at Hornby.

What was your judgment as to his capacity to transact the ordinary affairs of life?—He was competent to transact the ordinary affairs of life for any thing that I saw. I saw nothing of his ordering about his house. He was very civil, polite, and attentive to his guests, but I never saw him upon business. I may perhaps once or twice have seen him execute a deed.

From what you knew of him would you at all have had any reluctance or objection in attesting his will?—Not in the least.

Cross-examined by Sir JAMES SCARLETT.—Although you do not understand music, you understand "God save the King"?—I used to sing that when I was a young man.

You have left that off now?—Yes, I am retired much from the world; I have had a great deal of ill health.

When did you first know Mr. Wright?—When I was first at Over-Kellet school.

With him?—Yes, he was at that school. There were two schools in one house. I was at the grammar school, and he was at the writing school.

What was he?—He was the son of a farmer that lived at Aughton. His father was a client at the office where I served my clerkship.

Did you know much of Wright in those days?—No, I remember his coming to that school very well.

Do you remember when he began to get his livelihood?—I did not see him afterwards till I saw him at Wennington Hall.

When first do you remember him at Wennington Hall?—I should think not till about the death of Henry Marsden, the elder brother. I knew him also; I used to be at his mother's in Lancaster, and used to see him.

Do you remember the circumstance of his death?—Yes.

Had you been at Wennington Hall before the death of Henry Marsden?—I think not, but soon afterwards.

What was the capacity of Wright then?—He was agent or steward.

You do not know that he was a menial servant during Henry Marsden's life time?—No, I did not know. I understood he was steward. I went to examine some witnesses about the action.

You say that Wright came and asked you to go to town?—He brought a message from Mr. Marsden to the office.

You went then as a clerk to Bleasdale?—Yes.

Did you see Wright and Marsden when you were in town?—I never saw them but once. I took supper with them; they were in Leicester Fields.

Then as to Marsden, you remember him at school.—Yes.

He was older than you?—Yes, two, three, or four years.

What did you learn at that free school, what did they teach?—The Greek and Latin classics, and English to some of the boys.

Did Marsden learn Latin?—I think so.

Do you think so?—I think so, but I cannot be certain.

Digitized by Google

Digitized by Google

Digitized by Google

Did you not say it seemed rather too hard for him?—Yes, it did, it appeared to be too hard for him; I talked to him about his exercises, at nights; he did not seem to get on, but he seemed to me to have been neglected from his early years.

How old was he at that time?—I suppose he would be thirteen.

The question is not whether he were neglected, but the question is whether he could get on at school with such exercises as little boys get on with?—I remember his talking to me about his exercises at his mother's, and he seemed to be rather dull and slow at getting on.

Did you ever see him saying his lesson to the master?—No, he was not in any class with the other boys, he stood by himself.

Who was the master?—There was a change of ushers; I think Mr. Scisson was the master.

How long were you at school?—I was at the school perhaps five years.

How long was he there do you recollect?—I am not certain about that; he was but a short time, perhaps half-a-year.

Was he there when you went?—No, he came after I was there.

You were about ten years old?—It was in the year 1774; I think I should be then about eleven years old; I was born in the year 1763.

That was in the year 1774?—Yes.

Mr. Marsden was born in 1758?—I considered him four years older than me, or better; I do not recollect his age at all.

He was a bigger boy by much than you?—He was not big, he was rather short of his age; I was tall.

Then you lost sight of him after you left that school, till you went to Wennington Hall?—Yes.

And the establishment consisted of Mrs. Cookson, Mr. Wright and Mr. Marsden?—Yes.

Do you remember any body else?—No; I recollect seeing Mr. Lister of Giggleswick there; there were several servants, male and female.

Do you remember Miss Tatham?—Yes, I did know her; she used to visit at the house in town, when I was a boy.

What sort of woman was she. I do not mean as to beauty, for all the Lancashire ladies are beauties; you know that?—No, not at all.

What relation was she?—A cousin; she was a sensible, conversable woman. I had a great deal of talk with her; she was fond of talking of the Lancaster people.

Did you know Henry Tatham?—Yes, he was a little, deformed man; he was a tea-dealer in London.

Sir James Scarlett.—As a lawyer we heard of him.

He was a little, deformed man, was he?—Yes, he was.

And rather a weakish man?—I don't know; he used to play whist very well.

Any body can play that game?—But he played in a superior style; much better than I did.

You played whist in the nursery?—No, I never ascended so far; it was too much for the nursery when you and I, Sir James, were there.

But it is long since you and I left the nursery?—It was not a nursery game then.

You have been asked a general question as to Mr. Marsden, I think your answer was, that you said he was capable of managing his affairs if he

Digitized by Google

had a good agent?—Mr. Wright managed mostly his affairs; these he managed constantly.

Did you know any affairs he did not manage for him except saying grace?—Once or twice I saw him execute a deed.

You say you never talked to him about business?—No, but about battles, and so on; he had a very good memory.

About battles what did he remember?---could he tell one battle from another, which we find very often very clever persons cannot do?—He knew most of the battles, the days they were fought upon, and the names of the officers.

You have never talked to him on business?—I think not upon matters of business.

Did you ever know him learn arithmetic?—No, I never did.

Did you ever try whether he could sum two figures up together?—No, I never did.

Do you not know that he made no proficiency either in Latin or arithmetic?—I don't know. He was not a very good scholar, for I have seen very little of his scholarship indeed; I have seen letters of his.

I ask you from your knowledge of him at school, did he make any proficiency either in Latin or arithmetic?—I do not know indeed.

Try and recollect; perhaps, I may refresh your memory; do not you know you used to assist him in his spelling?—No. I assisted him in his exercises, but I do not recollect.

Was he not in Fisher's English Grammar?—I believe he was.

Was it not in that you assisted him?—Perhaps it might.

Recollect yourself; did you know him in any other book except in Fisher's English Grammar, in which you assisted him?—He had some other English book. That was almost the only English book of grammar of that day. I assisted him, I think it was in the rules of grammar.

Are you certain it was in the rules?—I am not certain; it might have been in the spelling.

He tried to get it by heart?—Yes.

You took the book and led him?—Perhaps I might; it is a long time ago.

You were about eleven?—Yes.

And he might be about sixteen?—Yes.

You talked about his being a politician; Mr. Sergeant Atcherley asked you whether he were a great politician, and your answer was that he took a particular side?—Yes; he read the news of the day regularly; he was a tory, and took the tory side. He was the particular friend of Colonel Cawthorne for many years.

Do you know when Mr. Gladstone was a candidate?—Yes I never have been well since. I sat up two or three nights; I have been ill ever since.

Do you recollect any application to Mr. Marsden for his vote, and you referred the person to Wright; you saw the person who canvassed?—I do not recollect any thing of that sort.

You do not recollect any thing of the sort?—I do not indeed.

Upon that very occasion when you sat up two or three nights and have been ill ever since, do not you recollect that other circumstance?—I do not recollect a word of the sort. Mr. Wright generally canvassed Mr. Marsden's voters. Mr. Marsden sent him.

Digitized by Google

Digitized by Google

Digitized by Google

Were you ever present when he sent him?—Yes, I was present when he gave him directions at Hornby Castle to go and canvass the voters, particularly at Kirkby Lonsdale.

Was that upon the last occasion?—No; I was there during all the last election; that is Gladstone's election.

Were you in the committee-room during the last election at all?—I was in the private committee-room, and occasionally in the other committee-room.

Re-examined by Mr. SERGEANT ATCHERLEY.

You spoke of Henry Tatham being a teaman?—Yes.

Was he afterwards Clerk of the Peace for Westmoreland?—Yes; Lord Lonsdale gave him the appointment.

You are sure that was the same man?—Yes; London did not agree with him.

My learned friend asked you about Mr. Marsden employing a steward; do you know the extent of his property?—It is very extensive.

Is it property that requires the care and employment of a steward?—Yes.

By Sir JAMES SCARLETT.—Do you know whether Mr. Henry Tatham ever executed the office of clerk of the peace himself?—I do not know, but I think I have seen the Westmoreland paper with his name as executing it.

Examined by Mr. BARON GURNEY.—Upon a former occasion, you said something about Mr. Marsden being well read in the red book?—Yes, he used to know the red book, and to quote it a good deal about the nobility and gentry.

Did he appear to you to be well acquainted with the genealogy of great people?—Yes; as to great people, he used to be conversant with the genealogy of many of them.

I was referring to your former evidence; did you state that formerly?—Yes, my lord, I think I did; he was conversant with many of them.

How was he as to memory?—He had a very good memory.

Could he read English?—I think I never heard him read. I have seen him read the last word frequently.

Colonel James Law Lushington sworn.—Examined by Mr. WIGHTMAN.—You are a Colonel in the East India Company's service?—I am.

And a director also?—I am out by rotation; I am not so now.

You once represented the city of Carlisle, in Parliament?—Yes.

Did you know the late Mr. Marsden?—Yes; very well.

Have you staid at Hornby Castle?—Yes.

For how long at a time?—For ten days.

In what year or years?—In 1805, for one of the years.

During that time had you frequent opportunities of seeing much of Mr. Marsden personally?—Yes, the whole of that time. I spent part of my time in his company.

What was his conduct and demeanour towards you and his guests?—Perfectly polite and gentlemanly; very anxious to please, and attentive.

Did you ever walk out with him?—I never did.

Did your brother Mr. William Lushington stay at Hornby at the same time you were there?—He was there at the same time.

Are you fond of music, Colonel Lushington?—Yes I am.

Are you a performer yourself on the violin?—I used to play the violin, but I left it off of late years.

Did the late Mr. Marsden play on the violin?—Yes he did.

Digitized by Google

Did he ever play with you and his brother when at Hornby Castle?—He played with me repeatedly, and also with my brother.

Upon what instrument?—The violin.

From notes?—Yes, and also without notes.

What was the music you played with him?—Several easy pieces harmonized for two instruments, I also tried Correlli's Concertos with him.

Did he ever play alone upon the violin in your presence?—Yes.

What was his manner; was it shy and reserved, or otherwise?—Very shy and reserved, particularly at first. He became a little better afterwards when I staid in the house for some days; he appeared to be less diffident and less reserved.

Was he near sighted?—Very near sighted.

Were many persons invited to dine with him during the time you were there?—No, I do not recollect any excepting Mr. Anthony Lister when I was there.

The present Mr. Lister?—Yes, the present Mr. Anthony Lister Marsden, he is now Mr. Marsden.

Now, do you or do you not know the names of the persons who were asked to visit there when you staid there?—I do not recollect their names.

In your judgment was Mr. Marsden capable or not of managing and conducting the ordinary affairs of life?—I should say he was, there was nothing that gave me a contrary opinion of him.

Now, from what you saw of him should you have had any difficulty or hesitation in becoming a witness to his will?—Certainly not.

Cross-examined by Sir JAMES SCARLETT.—What time of the year was it?—In the autumn of 1805; the shooting season.

Did you go out with him any day?—No I did not. I seldom went out a-shooting; I am not a good shot.

Were there not the Misses Wright there?—I do not recollect, perhaps they were children. The only lady I saw there was Mrs. Wright.

And Mr. Wright was there?—Yes.

You never went out with Mr. Marsden you say?—No I did not.

Had you a great deal of conversation with him?—No, not a great deal; there was a little common conversation at table. There was no particular conversation, it was confined to ourselves.

At the table?—Yes.

Over a glass of wine?—I have heard him speak of the politics of the day; he was not altogether silent, if asked questions.

You speak of trying pieces harmonized for two instruments with him?—Yes.

And that you tried Correlli's Concertos?—Yes.

Was he up to those?—I said "*tried*" because we did not perform them well.

Was he short sighted and under the necessity of using spectacles when playing music?—Yes.

Am I to understand it was in the mornings that you played?—Generally it was, and also in the evenings.

Who was present when you played?—I do not know. My brother was present, and some one else, but I do not know who else.

Was Mr. Marsden celebrated for performing any particular tune?—He was celebrated in "Dainty Davie." I have heard him play that several times.

Digitized by Google

Digitized by Google

Digitized by Google

Every day that you staid there?—I think he played that more frequently than any other tune.

Did you not generally finish your concert by his playing the solo "Dainty Davie?"—I do not know whether he finished always with that tune or not.

When you had placed your music books, and he had put on his spectacles, did you finish any of the pieces you began?—Yes, some we finished, but we could not get on well; they were rather too difficult for us, as much for me as for himself.

Can you say that upon every evening when you were there, he did not regale the company with "Dainty Davie?"—I did not see him play every evening.

But when you did hear him play, it was that tune?—I cannot recollect, but he certainly played it very often. I should rather think he did not.

He played that best of any of his tunes?—He played it perfectly, correctly, and well.

Did he play any other solo except "Dainty Davie?"—I am not quite sure if he did. I think I recollect his playing "The Soldier's Joy."

You were examined the last time this cause was tried. Did you not say he played no other solo except "Dainty Davie," but that you played together "How sweet in the Woodlands," and "God save the King?"—Those we played together pretty well.

But did he himself play any other solo except "Dainty Davie?"—I cannot recollect; but my impression is that he did play the "Soldier's Joy."

Did you travel with your violin?—No. He was well furnished with violins; he had two violins I am sure; he had also a tenor.

Did you all three sometimes play together, your brother, you, and him?—No, we never all three played together.

Was there not a player upon the violincello also?—No, there was not.

Do you remember playing any other tunes with him except "How sweet in the Woodlands" and "God save the King?"—Yes; we tried some duets of Schwindel's, which are easier than Correlli's.

Did you get through those?—Yes, we got through those.

Are you sure you got through them?—We certainly got through them.

Do you mean to say you kept time together?—No, I don't say we played particularly well, I am a very bad timeist myself, and it is a very difficult thing to keep accurate time.

So it is, unless you have a very accurate knowledge of music?—Many can play well who cannot keep time.

You must excuse me, Colonel Lushington, but in that I differ from you; none can be good players except they keep good time. Were you accustomed to play duets yourself?—Yes.

Do you know any particular circumstance that occurred when you did not keep time?—Mr. Marsden knew when we did not keep good time. When we did not keep together, I was before him, and he said, "We had better begin again."

By GURNEY, B.—Which of you were right?—I cannot say, my Lord.

I think you mentioned the last time that upon one occasion you were in the wrong, and he in the right?—I think that might be so.

By Sir JAMES SCARLETT.—Are you speaking from your memory of what passed?—I cannot speak otherwise; I speak from memory, of course.

You speak from a general impression of what passed?—Yes; my recollection is as to what took place: I state it from the best of my belief.

Digitized by Google

Which of the two finished first, or a particular portion of music first?—I recollect upon one occasion I was done and resting, and he had not finished, and therefore we had to begin again together.

You did not make harmony of it; you had got more before him than you ought to have done by how many bars?—I do not recollect how many.

But you were a bar or two before him, so that it must have been curious music?—It must have been so.

Did you know whether Mrs. Wright were a lover of music?—Yes, I knew her; but I do not know as to her musical acquirements.

Did Mr. Wright understand music?—No, I do not think that Wright understood music.

Did Wright ever attend your concerts?—Yes, I think he sometimes was present.

Re-examined by the ATTORNEY-GENERAL.—Did you see enough of Mr. Marsden to enable you to form a judgment as to whether he were competent to make his will or not, and that you would have had no hesitation to attest it?—I saw nothing in his conduct that would give me an idea that he was not equal to the ordinary affairs of life.

But, it being disputed, I ask you, did you see enough of him to enable you to form an opinion upon his capacity?—I have given my opinion that I think he was competent.

You are of opinion still that he was as you have stated?—Yes.

Colonel John Bradshaw sworn.—Examined by Mr. TOMLINSON.—What age are you, Mr. Bradshaw?—I am 73.

Have you been Lieutenant-Colonel of the Local Militia?—I have.

And have been in the Commission of the Peace for this county?—Yes.

Have you lived in the neighbourhood of Hornby during the greatest part of your life?—Yes, for the greatest part of my life.

Were you acquainted with the late Mr. Marsden?—Very well.

For how many years were you acquainted with him?—About 50 years.

Did you frequently visit him?—Very frequently.

Was he living at Wennington Hall or at Hornby Castle when you first knew him?—He was living at Wennington Hall when I first knew him.

Did you visit him there?—Yes.

And also subsequently at Hornby Castle?—Yes.

Had you been much acquainted with him?—I was for a week or ten days at a time frequently with him.

Did you walk out with him frequently?—Sometimes I did. He was not fond of much exercise. He used to go sometimes a shooting.

Had you frequently conversation with him?—Very frequently.

What were his manners?—He was of very polite manners; a very friendly and polite man.

Was he very short sighted?—Yes he was. He wore his hat over his eyes. His eyes looked rather as if they were sandy.

Was there any air of *shying* about him?—He was a shy man except to his particular friends.

What was his disposition?—He was of a very good disposition; a very benevolent, kind-hearted man, and very charitable.

Had he been well educated or otherwise?—He was left very short in that respect.

Did he ever complain of that?—No, I never heard him complain of it.

Digitized by Google

Digitized by Google

Digitized by Google

Did he see much company at Hornby Castle?—A good deal.

There were large parties there sometimes?—Yes.

Did you meet the gentry of the neighbourhood sometimes in those parties?—Yes, frequently.

And the clergymen of the neighbourhood?—Mr. Procter used almost always to be there, and several other clergymen besides.

Do you recollect the names of any of the gentlemen you were in the habit of meeting there?—Yes, many of them; there was Mr. Gibson of Quernmore Park, Mr. Worswicks, Mr. Gillow, Mr. Stainbank the clergyman, and Mr. Lister, of Belle Hill.

Any others?—Yes, there were many more, but I cannot recollect them, there were many besides.

Did he attend your brother's funeral?—Yes.

Was he one of the pall bearers on that occasion?—Yes he was.

Had your brother a large estate adjoining his or near it?—Yes, within five or six miles, and partly within three miles of it.

Was Mr. Marsden's estate a difficult one to manage?—Yes, it required a good deal of attention after it was purchased.

Did you ever see Mr. Marsden in company with Mr. Wright, his steward?—Yes, frequently.

What was Mr. Wright's manner and behaviour to him?—I never saw Mr. Wright behave in any way indecorously to him at all; quite the reverse whenever I saw him.

Did you ever hear them differ in opinion?—Mr. Marsden was once vexed with Wright for not bringing some of the best wine. Mr. Marsden desired some of the best in the cellar to be brought out, and Mr. Wright did not do so, and Mr. Marsden seemed vexed with him, but I never heard any hasty words.

Have you ever heard Mr. Marsden speak about his intended improvements or such as he wished to be made?—Yes.

You have heard him speak of them have you?—Yes, as to his hothouse and other improvements he had made. He was particularly friendly with me. I saved his life once, and swam the river for him.

Were those other improvements afterwards made that were pointed out to you?—Yes they were.

Have you ever been with him at church or chapel?—Yes, at both.

What was his manner there?—He behaved extremely well, and attended to the service, and read his prayers and other things very distinctly and loud.

What kind of memory had Mr. Marsden?—He had an excellent memory. He used to be referred to upon all occasions wherever there was a dispute as to things that had happened some years before; if you asked Marsden he always set you right.

Did he take a great interest in pedigrees and genealogies, and some things of that kind?—Yes, frequently.

Was he a person much appealed to on subjects of that kind in company?—Yes, very frequently.

Have you seen him read the newspapers, or heard him read them?—I have both seen him and heard him read them.

Did he take an interest in politics?—Yes, a good deal; particularly whenever there had been any naval or land engagements: he generally was a bottle or two extraordinary upon those occasions.

Digitized by Google

Did he belong to any party?—Yes, he was a tory.

Were you of the same party?—Yes.

Did he take a part in the elections of this town?—Yes, and a very steady one too. He used to head his troops up to the poll; they used to come on horseback behind him in great style.

And he was at the head of them on horseback was he?—No, in a post chaise.

You have been in the habit of receiving notes and letters from him?—A great many.

Have you ever seen him write?—Yes.

Did he ever make a complaint before you against poachers when you acted as a magistrate?—Yes, several were made from Hornby Castle—some by him and some by Mr. Wright.

Did he ever attend to one of them?—Particularly one as to a man stealing some fish in the river above the house.

Did you take the information?—Yes, I did.

Did Mr. Marsden make a personal application to you about it?—Yes, he wrote me a note about it.

Did you meet him there?—Yes.

Did you convict the man upon that complaint?—I do not recollect whether we convicted him or whether Mr. Marsden forgave him.—I am sure I cannot charge my memory with it.

Look at those papers and probably you may recollect (handing some papers which the witness inspected).

By Gurney B.—Is that your paper, or conviction, or any thing else?—Yes, I think it is, but I cannot well see it.

Take your spectacles.—I can see very well generally without them, but it is rather dark (witness using his spectacles).—Yes, I think it is the information.

By Mr. Tomlinson.—Is that the information on which you proceeded?—Yes.

And had he personally complained before that?—Yes, that is my hand-writing, and that is the hand-writing of Mr. Baldwin's clerk.

Attorney-General.—It is dated the 20th of June, 1798.

Had he personally complained of them, the poachers?—Yes, many times.

By the Attorney-General.—Look at that and say if that be Mr. Marsden's hand-writing and deposition? (handing the document.)—Yes, I know that without my spectacles.

That is Mr. Marsden's hand-writing is it?—Yes it is.

By Mr. Tomlinson.—It was in Hornby Castle where you proceeded?—Yes.

In Mr. Marsden's presence?—Yes

And upon his personal complaint?—Yes.

Had you ever any conversation with Mr. Marsden about his intended will? Oh yes, frequently.

Has he in those conversations expressed to you his intentions as to the disposal of his property?—Certainly he has many times.

Do you recollect the intention he expressed?—Yes.

What was it?—It was to make Mr. Lister, of Giggleswick, heir to his property, and to make a handsome provision to Mr. Wright.

Digitized by Google

Digitized by Google

Digitized by Google

Having known him so well, did you think him competent to make a will?—Yes.

Had you any doubt about it?—None in the world.

As a gentleman would you have had any hesitation in attesting his will? None at all.

Cross-examined by Mr. CRESSWELL.—You have been examined about this matter before: have you not said this—"I have not lately acted as a Justice of the Peace"?—Well, I have not. I live now over the Sands.

You have had the misfortune to fall into embarrassed circumstances, and to have been in the Castle here for a time?—Yes.

When you were examined before did you not tell us that you once spoke to Mr. Marsden, and not several times?—I spoke to him several times. I might say so; I cannot recollect; but I spoke to him several times; almost every time I went up, if we had an opportunity of being alone.

When you found yourselves alone did he take that opportunity of always speaking of his will?—Not always; he generally began himself. The first time I asked him what he meant to do with his new purchase, Hornby Castle.

When was that?—A short time after he had purchased it; about three years after he had purchased it.

About 1795?—About 1792, I dare say.

How long had he lived in Hornby at that time?—A good while.

About what year was it that you had this conversation with him?—It was about three years after he went to live there, to the best of my recollection.

That will be about 1795, is it not?—In 1792, I think.

How did the conversation begin?—I asked him what he meant to do, and how he meant to dispose of it; jokingly I said "You had as well leave it to me." "No, no," says he, "that won't do." "Then," I said, "you should marry." He said "No, he would not marry." I said, "Tatham is your heir-at-law, I believe." "Yes," says he, "but he has not behaved well; I will not leave him any thing. I mean to leave it to Mr. Lister, of Belle Hill, making a handsome provision to Mr. Wright, as he has been a very faithful steward to me."

That is the first time you went there that you spoke to him about his will?—Yes.

About how many times did you speak to him about his will?—I cannot say.

Twenty times?—I cannot say so often as that. I often used to see people there.

Were you never with him twenty times alone in all your long acquaintance?—Not twenty times since 1795. I cannot recollect. I may have been, but I do not think I was.

But nearly every time you were alone he began to speak about his will?—He used to talk about how he would dispose of his property.

Did he ever act as justice of the peace?—Not that I know of.

In your judgment would he have been fit for it?—I do not know indeed.

Have you ever formed an opinion in your own mind?—I do not think he was sufficiently knowing to be so; he was not then; he had not read any law; it was not his study.

Did you ever talk to him about prosecutions?—Yes.

From his manner of talking of them he was not fit you thought to be a justice of the peace?—He knew very little of that.

Digitized by Google

You have not said that he would be fit for a justice of the peace, if he had had a turn that way?—I cannot say I have.

On the last trial did you not say so?—I do not recollect.

Was he not fond of field sports?—I have been hunting with him many years ago several times.

When was it?—Many years ago.

At Hornby?—In the neighbourhood for a week.

When about was it; how long had you been at Hornby when you hunted with him for a week?—I cannot say how long ago it is.

Is it ten or twenty years ago?—Thirty-five years ago it may have been.

That would be about 1799 or 1800?—Yes, thereabouts.

Did you ever go a shooting with him?—Yes.

And fishing?—Yes.

And fishing with Wright too?—Yes.

Did you ever know Marsden discharge any public duty?—Not that I know of.

Did you ever know him serve as a special juryman?—No.

Nor as a grand juryman?—No.

He generally lived at Hornby after he went there?—Yes, I believe he did. He used to go to Belle Hill and see Lister and stay there.

Did you ever go to Belle Hill with him?—Yes, many times I have been there with him.

How did it happen that you saved his life; how came he into the river?—He and my brother fell out of the boat together. There were two people in the boat besides me at Halton, hunting ducks, and standing upon the stern of the boat.

How long is that ago?—About forty years ago.

You talked of his attending your brother's funeral; who else were there?—Several of the neighbouring gentlemen; Mr. Atkinson, Mr. Baldwin.

Mr. Wright?—I cannot tell whether he were or not. I believe Mr. Gibson was there.

You mentioned some people that were there dining; did they all dine at the same time?—He used to have large parties.

Worswick and Gillow, did they meet together there?—Yes; they were relations.

How many have you seen in those large parties?—Thirty.

Was not this shy man terribly put about when he had so many people?—He used to be very polite. I do not believe he liked it. He liked a small party, but it was necessary to have large parties now and then.

Did he ever make any public avowal that it was necessary for him to collect all the gentlemen at once?—Not that I know of.

Where was the necessity of his having thirty people together?—Because he had dined with them, and he preferred having all of them together.

He preferred having a considerable party to half-a-dozen being present at once?—I do not know as to that, but he had it so.

Did you ever hear him grumble at the wine?—Never, but once.

Who was there besides you, then?—Mr. Baldwin.

He was an attorney?—He was my clerk.

And Mr. Baldwin, who was once your clerk, was Mr. Marsden's attorney?—Yes; and he was once my clerk.

Was that the occasion you went to the fishery?—No; I do not think it was. We used to take a variety of amusement, such as shooting.

Digitized by Google

Digitized by Google

Digitized by Google

What was the occasion of taking extra wine in the evening?—We had heard of some good news. A victory.

Had you been together a rook-shooting?—No.

What had you been about that day?—Fishing.

What time of the year was it?—In the spring.

Was it a victory by sea, or land?—I cannot say. I am no politician.

Perhaps you do not know of any pedigrees either, unless the pedigree of a horse?—I do not care much about pedigrees.

You have given up hunting?—Yes.

You told us that Mr. Marsden insisted upon having the best wine; did you get the best wine?—We did.

Did Mr. Wright go for it?—No; Mr. Wright went out of the room and Mr. Marsden sent the servant for it.

When did Mr. Wright come back?—He went out and came back soon afterwards, and we had the wine upon the table, and were drinking it.

When Mr. Wright had gone out?—Yes. He drew the cork.

Can you tell me any genealogy he was fond of repeating?—I cannot; it is impossible for me to recollect any one in particular; how should I?

Whether he related them rightly or wrongly, you do not know about it?—No; I had no concern about it.

He was talking upon family subjects?—Yes.

Did he ever talk of the families of the judges that were lawyers?—No.

Or the High Sheriff?—Yes, I heard him talk of the High Sheriff.

Was he ever High Sheriff?—No.

Re-examined by the Attorney-General.—Where were you educated?—At Eton.

Where did you afterwards go to?—To Cambridge.

What college?—St. John's.

Where did you afterwards go to?—To Gray's Inn.

For what purpose?—To study the law.

Were you ever called to the bar?—No. I did not like it.

Instead of being called to the bar, what did you do?—I came down to the country, and commenced sportsman ever since.

Have you any property?—Yes.

How came you to be in the Castle?—A person arrested me for £35.

How came you to be unable to pay it?—Owing to some family disturbances, I had to give up my estate, and they made me an allowance of £300 a-year. They stopped my £300, and I could not pay the person.

You say you have been at Belle Hill with Mr. Marsden?—Yes.

More than once?—Yes, a dozen times.

Do you know whether it was his habit to go there occasionally?—Yes, he was very fond of Mr. Lister.

Do you know the hand-writing of Charles Tatham?—Yes.

Tell me if you believe that letter to be his hand-writing? (handing it)—Yes, that is his hand.

Attorney-General.—Those letters that are proved I had better put in.

Gurney, B.—I see he was called to prove the hand-writing of Croft.

Do you know the hand-writing of Mr. Croft?—I do not know; I have not seen it for a long time; but I dare say I should, if I saw it.

Look over those letters, and tell me if you see it? (handing them)—Yes, those are all his hand-writing.

Is that also his hand-writing? (handing another)—Yes, it is; I see his name.

Digitized by Google

ATTORNEY-GENERAL.—That document which is signed John Bradshaw, is an information at the suit of John Marsden against John Taylor, husbandman. Mr. Marsden swears he is owner of the property, and Saul swears as a witness to the trespass.

The *Rev. John Garnett* sworn. Examined by Mr. SAMUEL MARTIN.—I believe you are the curate of some place in this county.—I am the curate of Firbank.

Were you acquainted with the late Mr. John Marsden ?—Yes.

About what time did you become acquainted with him ?—In 1797.

Were you assistant curate of Hornby at that time ?—I was.

How long did you continue to be so ?—Three years.

During that time did you frequently see Mr. Marsden ?—Yes, frequently.

Were you in the habit of dining with him ?—Very often; every Sunday, generally.

Do you mean on other days as well as Sundays ?—Yes, for weeks together sometimes.

Did you meet many persons there at dinner ?—Yes, particularly at the assizes.

Do you recollect any persons you met at dinner there ?—Mr. Baron Wood. I have met Mr. Clifton and Mr. Barrow.

Any other persons ?—Several others; Mr. Eidsforth, Mr. Lister, the old gentleman, and the present one, Mr. Croft also.

Is that Mr. Croft of Gargrave ?—Yes.

Did you know if Mr. Croft was Mr. Marsden's tutor ?—No, I did not.

What was Mr. Marsden's conduct on those occasions ?—Very gentlemanly.

Was Mr. Wright present on those occasions ?—Yes, always.

Have you seen Mr. Marsden when Mr. Wright was not present ?—Yes, I have.

Did you observe any difference in his manner at that time ?—No, not in the least.

Did Mr. Marsden appear to you to be a well educated man ?—No.

Did he ever speak to you as to his education being neglected ?—No, he did not.

Did you ever hear him speak of his property ?—No, I never did.

Did you consider Mr. Marsden capable of transacting the affairs of life ?—Certainly I did.

Did you consider him competent to make a will ?—Yes.

Would you have attested his will if called upon to do so ?—Yes, certainly.

Cross-examined by Mr. STARKIE.—How long is it since you saw Mr. Baron Wood at Hornby ?—It would be thirty years ago. He was not Baron Wood at that time.

How long is it since you left Hornby ?—Near thirty years. I was there three years; I went there in 1797.

That would be thirty-four years since you were there ?—Yes.

Had you been in the habit of visiting there since ?—Only once. I went to Prestwich.

Near Manchester ?—Yes.

Was there a large party when Baron Wood, Mr. Barrow, and other gentlemen were there ?—Eight or ten.

Mr. Clifton, did he dine there the same day ?—Yes, two or three times he dined there.

Digitized by Google

Digitized by Google

Digitized by Google

Did he dine there the same day that Mr. Baron Wood was there?—I do not know. I introduced him to Mr. Marsden.

There would be a good deal of talking with all these lawyers there?—Yes.

Did Mr. Marsden appear distressed at all upon that?—Not at all.

He did not seem shy at all, did he?—No, not at all.

You say he was able to manage the ordinary business of life?—Like any other gentleman.

Tell us what was the ordinary business of life, what was it you saw him do?—I have seen him give orders, and seen him pay money; he has paid money to me.

Paying a debt to you?—Yes, he owed a subscription to a book.

Was it for a book of your brother's?—Yes, two copies.

What other debt was there?—No other debt. He gave me half-a guinea for christening John Marsden Wright.

Was that your perquisite?—Yes.

He paid you two guineas for your brother's book, and gave you half-a-guinea to yourself?—Yes.

That is all?—Yes.

And that is what brings you to this conclusion, is it?—Yes.

By ordinary occurrences, I suppose you mean he would do as other people?—Yes.

And drink a glass of wine, and was civil and polite to people?—Yes.

And was, in general, very polite, asking always how they did?—Yes.

Re-examined by the ATTORNEY-GENERAL.—How many years did you know him?—After those three years, I never saw him for twenty years.

Did you see him then?—Yes.

When was that?—It is twenty years ago, or nineteen years.

Where did you see him then?—At Hornby Castle.

How long did you stay there?—I was there a night. I went away in the morning, and breakfasted at Tatham.

Did you ever see him again?—No.

How often did you use to see him during those three years?—Very frequently, on Sundays.

And sometimes for a week together?—Yes, at Hornby Castle.

Have you been staying there more than once, for that time?—No; only once for a week there together.

Have you the means of recollecting; did you minute down his conversations?—No.

Nor the subjects he talked of?—No.

Had you the means of knowing whether he had sufficient knowledge and capacity to conduct the ordinary affairs of life?—Yes.

In your judgment had he capacity?—Yes.

Have you any doubt of it?—No, not at all.

Is that the writing of Mr. Ellershaw?—(handing a paper) Yes it is.

Mr. Edward William Topham sworn.—Examined by the ATTORNEY GENERAL. Are you clerk to Mr. Ward?—Yes.

What is he?—Deputy Registrar of the Diocese of Chester.

Do you produce, or have you a book of resignations?—Yes, I have the Act of Resignation in the Bishop's book of acts.

Do you produce the Act of Resignation of Mr. Ellershaw?—Yes.

Give it me. (Witness handing it in.)

Digitized by Google

The clerk read the Act of Resignation alluded to, dated 19th October, 1799. By the Reverend Henry Ellershaw of the perpetual curacy of Hornby in the county of Lancaster, intimating that it was accepted.

Do you produce any presentation to any livings or any chapelries by Mr. Marsden?—Yes, there are seven in all; three to Tatham; three to Hornby; and one to the school of Melling.

Give them to me in the order of their date, or as to the same place. Give me first the three to Tatham?—Yes, (witness producing them.)

The Attorney General then read the three presentations alluded to, as follows:—

TATHAM RECTORY.

Presentation by John Marsden, of Hornby Castle, Esquire.

Date of Presentation.	Name of Person Presented.	How Void.	Patron.	When Instituted.
1794, June 28.	John Tatham, A. B.	Death of Richard Wilson.	The said John Marsden	July 7, 1794.
		Signed John *(L. S.)* Marsden, No Witnesses to attest Execution.		
1809, April 22.	Anthony Lister, A. M.	Death of John Tatham.	Do.	June 19, 1809.
	Attested by Geo. Wright.	(Signed) John Marsden *(L. S.)*		
1823, August 8.	John Marsden Wright.	Resignation of Anthony Lister	Same Patron,	Aug. 13, 1823.
	Attested by Giles Bleasdale, Geo. Wright.	(Signed) John Marsden *(L. S.)*		

The witness also produced the following:—

HORNBY PERPETUAL CURACY.

Nominations by John Marsden, of Hornby Castle, Esquire.

Date of Nomination.	Name of Person Nominated.	How Void.	Patron.	When Licensed.
1800, January 20.	Tho. Clarkson, A. M.	Resignation of Henry Ellershaw.	The said John Marsden,	May 13, 1800.
	Attested by Geo. Wright,		(Signed) John Marsden.	
1802, April 17.	Anthony Lister, A. B.	Cession of Thomas Clarkson.	Same Patron.	May 2, 1802.
	Attested by Geo. Wright.		(Signed) John Marsden.	
1806, January 23.	Robert Procter.	Cession of Anthony Lister.	Same Patron.	No Date of License.

MELLING SCHOOL, (No. 1.)

1797, June 24.	John Wilkinson, Clerk.	Resignation of Jacob Fletcher, clk.	Same Patron	Jan 20, 1798.

HORNBY P. C.

1799, *Oct.* 19.—*Acceptance of Resignation of Mr. Ellershaw.*

Digitized by Google

Digitized by Google

Digitized by Google

GURNEY, B.—You may dismiss two or three witnesses to hands' writing instead of keeping them here, as we shall soon adjourn for this day.

Sir J. SCARLETT.—These presentations are new, and I would wish to have the hand writing proved. The facts were well known and discussed.

The documents were all put in.

ATTORNEY-GENERAL.—Mr. Sharp will be here to-morrow. Mr. Carr is here, but I do not know that he can prove any more than Dawson's hand writing. The officers may take these presentations back again and produce them to-morrow. There are two or three depositions, which, if your lordship please, we may fill up the time of this day by reading.

GURNEY, B.—Certainly that would be convenient.

The ATTORNEY GENERAL.—We will read Mr. Townley Clarkson's depositions. I believe your lordship has a copy of them?

Baron GURNEY.—Yes, I have.

The clerk then proceeded to read the depositions of the Reverend Townley Clarkson, as follows:—

The *Reverend Townley Clarkson*, of Hinxton, near Cambridge, now of Bartlett's Buildings, Holborn, London, aged 55 years.

To the first interrogatory this deponent saith, that he has known Sandford Tatham, the plaintiff in the title of the interrogatories named, from this deponent's earliest recollection, and the Reverend Anthony Marsden, late Anthony Lister, one of the defendants therein named, for twenty-five years, and the Reverend John Marsden Wright, and Margaret Wright, two other defendants therein named, since their early infancy.

To the second interrogatory this deponent saith, that he knew John Marsden, late of Hornby Castle, in the county of Lancaster, in the pleadings of this cause named, from the deponent's earliest recollection, and from the year 1787 till the year 1814 this deponent was upon the most intimate and friendly terms with him, and was in the habit of paying him a visit of several days, and sometimes weeks together, either at Hornby Castle, or Wennington Hall, another of his mansions, every year during that period, except the years 1797, 1809, 1810, and 1811, when this deponent was prevented by accidental circumstances from paying the said John Marsden the usual visit, and indeed this deponent was allowed to consider the said John Marsden's house as a kind of second home whenever this deponent liked to go there.

To the third, fourth, and fifth interrogatories this deponent saith, that during the whole of this deponent's acquaintance with the said John Marsden, he was in full possession and enjoyment of his faculties; was a man of quiet and contented disposition, always conducting himself on numerous occasions on which this deponent had the opportunity of observing his behaviour, as well in company as when alone, as a perfect gentleman; and particularly polite and attentive to strangers and easy and unembarrassed in his manners, perfectly capable of taking care of himself, and as much equal to transacting the ordinary business of life as any gentleman of similar rank, and brought up as he had been, could possibly be expected to be, with respect to the management of his own affairs, they were of that complicated character, comprehending the inclosure of commons and waste lands, the management of coal mines, fisheries, woods, manorial rights, and general improvements of his estates, that none but a real man of business could be well competent to the effective management of. And this deponent further saith, that the said John Marsden was not, in this deponent's judgment, a man of strong mind

Digitized by Google

and well qualified for the acquirement of science, but he possessed understanding sufficient for all the common purposes of life, and the retentiveness of his memory exceeded the generality of persons. And this deponent further saith, that he does not recollect the said John Marsden to have manifested any silliness or remarkable weakness. And this deponent considered him capable of forming a reasonable judgment and opinion upon general subjects, and with respect to his discrimination of character, this deponent frequently found him to evince a considerable acuteness in observing, as he frequently used to do to this deponent, upon the individuals who had been dining at his table or staying at his house. And this deponent saith, that he thinks that the said John Marsden was not competent to agree for the purchase of property, without the aforesaid assistance of persons experienced in valuing property, as indeed few gentlemen are; but the said John Marsden was, in this deponent's judgment, perfectly capable of disposing of his property by will, and giving rational and proper instructions for that purpose of his own accord, and without the suggestion of others, though he would require, as most unprofessional men do, some advice and assistance in forming the limitations of a will, or other similar legal instrument for the disposing of property. And this deponent further saith, that the said John Marsden confided the management of his property to the said defendant, George Wright, but the said defendant George Wright never, as this deponent believes, adopted any very important step in the management thereof, without consulting and obtaining the sanction of the said John Marsden. And this deponent has heard the said John Marsden differ in opinion with the said defendant George Wright, and has heard the said defendant George Wright, upon any proposal being made which he thought would not be acceptable to the said John Marsden, reply that he could not consent to it, because, as he used to say, the said John Marsden would not agree. And this deponent further saith, that he believes that the said John Marsden used to write notes and letters for himself. And this deponent remembers seeing a letter written by him to a relation of this deponent's, inviting him to his the said John Marsden's house, which was in the usual style of such compositions; but the said John Marsden was rather of indolent habits and avoided the trouble of writing on business. And this deponent further saith, that he considers that the said John Marsden was rather of timid mind, though he does not recollect to have observed him to manifest any particular symptoms of fear or timidity upon any occasion; and, on the contrary, this deponent has frequently seen him and known him go by himself up to persons fishing in the river Wenning without leave, and warn them off. And this deponent further saith, that the said John Marsden was constantly in the habit of walking out alone about his grounds, and used frequently to join the deponent when fishing, and then pursue his walk alone, and upon those occasions the said John Marsden was perfectly at his ease, and was never attended by or required the assistance or attendance of a servant. And this deponent further saith, that he has occasionally rode out with the said John Marsden, particularly in the hunting season, the said John Marsden used to have one or two saddle horses kept for his own use, but he was not particularly fond of riding exercise.

To the seventh interrogatory, this deponent saith that the said John Marsden occasionally paid visits to the neighbours, and was extremely hospitable and liberal at his own house, and was occasionally in the habit of receiving company, consisting sometimes of the country neighbouring gen-

Digitized by Google

Digitized by Google

Digitized by Google

tlemen of his own rank and station, sometimes, of barristers and other occasional visiters from Lancaster; amongst those who most frequently visited him were three Mr. Bradshaw, brothers; —— Welch, Esq.; Charles Gibson, Esq.; Robert Hesketh, Esq.; Robert Inman, Esq.; Alexander and Richard Worswick, Esqrs.; and John Fenton Cawthorne, Esq. the member for Lancaster. And this deponent further saith, that the said John Marsden invited his own guests, and if casual friends or acquaintances came to fish or sport upon the said John Marsden's grounds, or parties from Lancaster to view his place, the said defendant George Wright, as well as the said John Marsden, used frequently to ask them to stay to dine at the Castle, and it has sometimes happened that a respectable tradesman coming over from Lancaster on business has been asked to stay dinner; but this deponent never knew or heard of any person of that rank or station coming over to dinner there by invitation; and this deponent further saith, that the said John Marsden kept a pack of harriers for a number of years, and used to go out with them; and this deponent believes that the said John Marsden was also a subscriber to some hounds near Lancaster, but this deponent is unable to speak positively to that part, or to his the said John Marsden's going out with those hounds; and the deponent further saith, that the said John Marsden was much interested in the elections of members for his own town and county, and took an active part for any of his friends engaged in them; he was also extremely regular in his attendance in his parish church, and joined in, and was particularly attentive to the service there.

To the eighth interrogatory, this deponent saith, that during the period of this deponent's personal intercourse with the said JohnMarsden, he acted, and was considered and treated as the master of his own house; and this deponent saith, that sometimes he invited visiters, and sometimes the said George Wright, and sometimes they were actually received by one and sometimes by the other, but they were always introduced or announced, or went up to the said John Marsden as the master of the house; and this deponent further saith, that applications for leave to fish or shoot on the said John Marsden's property, were frequently made to the said John Marsden himself, sometimes the said defendant George Wright, when applied to, has granted the permission, but this deponent has frequently heard him refer the applicants to the said John Marsden; and this deponent further saith, that the family and servants always conducted themselves towards, and treated the said John Marsden with great respect, and he always held a proper demeanour towards them; and this deponent further saith, that whilst the cloth was on the table at dinner, the said defendant, George Wright, being an excellent carver, sat at the top of the table with the said John Marsden immediately on his right; but as soon as the cloth was removed, the said J. Marsden took the top of the table, and passed the bottle, and gave the toasts, which it was then very much the fashion to drink, and on those occasions the said John Marsden conducted himself with great propriety, and was indeed a remarkable good toast-master; and this deponent saith, that he has met ladies at the said John Marsden's table, but does not recollect any particular difference in the arrangements on such occasions; and this deponent further saith that the said John Marsden said grace at his own table before and after dinner, except this deponent or some other clergyman happened to be present when the said John Marsden called upon such clergyman to do so, according to the usual etiquette on such oc-

Digitized by Google

casions; and this deponent further saith that the said John Marsden gave directions to his servants as occasion required, and did so in a becoming and proper manner for a master of a house.

To the ninth interrogatory this deponent saith, that during this deponent's acquaintance with the said John Marsden, the said defendant, George Wright stood in the situation of the manager or steward of his property, but was at the same time treated with the utmost confidence by the said John Marsden, and more upon the footing of a friend and an equal than a person in his employ. And this deponent further saith, that the said George Wright had undoubtedly considerable influence with the said John Marsden from the length of his services, and the ability with which he managed the said John Marsden's property; but the said defendant, George Wright, did not exercise a controul over the said John Marsden, nor was he the said John Marsden under any restraint from or with the said defendant, George Wright, and never observed any difference in the manner or conduct of the said John Marsden, whether he was in the company of the said George Wright or not, nor does he recollect any instance of one controlling or reproving the other, except in the ordinary language of discussion, when persons differ in opinion. And this deponent further saith, that in his judgment, the said John Marsden was not easy or liable to be imposed upon, and had any person attempted to do so he was not at all a person to yield or submit to it.

To the tenth interrogatory this deponent saith, that the said John Marsden occasionally visited the said defendant Anthony Marsden, late A. Lister, and his late father, and was upon terms of great intimacy, so much so that it was long a very prevalent opinion that the said defendant would succeed to the bulk of the said John Marsden's property. And this deponent further saith, that he has frequently heard the said John Marsden express his partiality for the said last-named defendant and his family, but this deponent cannot recall to his recollection any particular expression of the said John Marsden's opinion, respecting the said defendant, George Wright. And this deponent further saith, that in his judgment, the said defendant, George Wright, managed the said John Marsden's property in his life time with great judgment and ability; and in the particular instance of the purchase and subsequent management of the estate bought by the said defendant, George Wright, for the said John Marsden, of Lord Wemyss, the said George Wright exhibited the greatest skill and judgment, and added very considerably to the value of the said John Marsden's property. And this deponent further saith, that the said defendant, George Wright, gave great satisfaction to the said John Marsden by his judicious management of his property; but this deponent believes the said George Wright gave offence to, and excited the ill will of some persons by a certain abruptness of manner.

To the last interrogatory this deponent saith, that considering the chief object of his examination as a witness in this cause, to be to ascertain his, this deponent's opinion as to the competency of the said John Marsden to make a will, and correctly dispose of his property, he, this deponent, upon his oath declares, that he always considered there were few persons possessed of better intentions towards, or more capable of making a just and correct disposition by will or otherwise than the said John Marsden.

TOWNLEY CLARKSON.

At a quarter past five, P. M., the Court adjourned until to-morrow.

Digitized by Google

Digitized by Google

Digitized by Google

Mr. Humphries sworn.—Examined by the Attorney General.—What are you?—I am *Deputy Custos Brevium* of the Court of Common Pleas.

Do you produce the chirograph fine, passed by Mr. Marsden in the Manor of Bradford, dated August, 1795?—Yes.

That relates to the cottages in that manor does it?—Yes.

Is there also an affidavit of Mr. Baldwin annexed to it, stating that he explained it to Mr. Marsden, by whom it was signed, as well as by Mr. Wright?—Yes (producing the document alluded to.)

Sir J. SCARLETT.—My lord, I submit that the affidavit now produced cannot be evidence.

The ATTORNEY GENERAL.—The deed declaring the use of the fine is not yet in evidence, but it is one of the deeds that Mr. Sharp will be examined to, by and by. I apprehend that the affidavit is part of the *res gesta*, and therefore ought to be used. Whatever mode the Court of Common Pleas adopts in order to give effect to, and to sanction its own acts, so as to give such instrument, validity; ll those documents at the distance of forty years may be given in evidence, to show that all those cautions were observed, and all those acts done that were necessary, and that the fine possesses the true character of a fine levied, and that the transaction has all the marks of genuineness about it. Under those circumstances, I submit I have a right to read the affidavit, to show that every thing was observed and done that was necessary, so as to give the fine its fullest effect.

Sergeant ATCHERLY.—My lord, I submit that the affidavit alluded to is clearly evidence. The affidavit is part of the ordinary machinery of the fine, which the Court of Common Pleas requires, as a substitute for the personal examination of the party appearing.

GURNEY. B.—It is suggested that the deed itself is about to be brought. You may wait for the deed.

Sir J. SCARLETT.—I still say that this is adopting a mode of admitting the evidence of another party to show the competency of Mr. Marsden upon that occasion of recovering the fine, and therefore Mr. Baldwin's affidavit cannot be evidence.

GURNEY, B.—I think the evidence is receivable. This is an act done by Mr. Marsden in the disposition of his property, and I think it is necessary to show that that act was regularly sustained in the customary mode when the party doing it appear in person in passing a fine.

Sir J. SCARLETT.—Will your lordship have the goodness to take a note of that objection?

GURNEY, B.—Yes, I have taken a note of it.

The affidavit of John Baldwin, dated August 1790, as to passing the fine, was then put in and read.*

Mr. William Sharp sworn.—Examined by the Attorney-General.

(Mr. Sharp, being very much indisposed, was allowed to be seated.)

Are you an attorney at Lancaster?—I am.

Are you the deputy-registrar for the archdeaconry of Richmond?—I am.

How long have you been in practice as an attorney?—Thirty-six years.

* See Appendix.

Digitized by Google

I believe you served your clerkship to Mr. Dowbiggin?—I did.

Was he Mr. Marsden's solicitor?—He was.

Do you know who had been the partner of Mr. Dowbiggin before that?—Mr. Baldwin.

Did you join Mr. Dowbiggin?—I did.

Did you then become jointly the attorney of Mr. Marsden?—We did in 1804.

When did you commence being the sole attorney of Mr. Marsden?—I began at that period to attend altogether to the business of Hornby Castle, nearly so, and in 1820 Mr. Dowbiggin and I dissolved partnership, and then I became sole attorney for Mr. Marsden.

From 1804 to 1820 you chiefly attended to the business of Hornby Castle?—Yes, I did.

Did you see Mr. Marsden occasionally, or at all, or frequently, or how?—Frequently. I was in the habit of staying all night, for two or three nights in a week, for a long period, and saw a great deal of him.

In what year did you marry?—In 1810.

Did you then pass more or less of your time in Hornby Castle?—I passed more of my time there previously; I used frequently to go and stop all night and take breakfast for the sake of the ride out.

Was Mr. Marsden in the habit of calling upon you in Lancaster?—He did. I should think he hardly ever came to Lancaster that he did not call, or if he were going to dine out he would call and ask me to go with him. He would take me in his carriage.

Have you been concerned for Mr. Marsden in suits at law and in equity?—I have.

Have you ever conversed with him upon matters of business?—Frequently.

In what character?—As his attorney.

Have you ever conversed with him upon the subject of those suits?—I have, both law suits and equity suits.

In your opinion was Mr. Marsden competent to make a will?—I did not doubt that at all. I had no doubt as to his competency to make a will. I should not have conversed with him upon legal and equitable subjects if he were not competent. I should certainly have had no hesitation to have made his will—certainly not.

Should you have had hesitation in attesting it?—Not at all; if his will were made I should have attested it without hesitation.

In your opinion was he competent to direct his affairs with the assistance that a gentleman who has property would require?—Certainly.

Was the property at Hornby Castle considerable or not?—It is extensive, and a property requiring a great deal of management, consisting of moors, mines, fisheries, and quarries.

Can you tell me about the extent of it in point of acres?—I could not at all.

Is it some hundreds of acres?—Yes, it is.

Are there manorial rights there?—Every description of manorial rights. They have been a great source of litigation; they were broken or infringed upon almost every day, as to the fisheries, the game, and other manorial rights.

Now, in respect of your intercourse with Mr. Marsden, have you conversed with him upon other subjects, so as to ascertain his state of mind?—Yes, generally; Mr. Marsden and I used to sit frequently chatting for an hour and a half in the evening after Mr. Wright had retired.

Digitized by Google

Digitized by Google

Digitized by Google

I believe Mr. Wright was the steward before you came into the business? —I understand so, for many years.

Do you remember in particular an equity suit with a person named Barrow?—Yes.

What Barrow was that?—Thomas Barrow, the barrister, who filed a bill against him and Mr. Wright. Mr. Croft of Gargrave stood indebted to Mr. Marsden and to the late Mr. James Barrow, and they both proceeded to recover, and ultimately got a sequestration in each suit, Mr. Barrow proceeded, and Mr. Marsden proceeded, and recovered sequestration. Mr. Wright was appointed sequestrator, and received the proceeds of the living, and accounted for it to Mr. Marsden; he accounted for the whole he received.

And that gave rise to the suit?—Yes.

Do you remember who was the attorney for the other side, in the bill filed by Barrow against Mr. Marsden and Mr. Wright?—A Mr. Moore was the attorney in the suit, but Mr. Wilson had previously been employed to make some application for payment to Barrow.

Was there any proposition of reference?—Yes. Mr. Marsden requested that I should make a proposition to refer it to Mr Wilson.

By GURNEY B.—To whom were you to make the offer?—To Mr. Wilson, the attorney, that the suit should be referred, and Mr. Marsden said, "might I not refer it to him himself?"

By Sir JAMES SCARLETT.—Did you make the application in writing? No, I made it personally.

By the ATTORNEY-GENERAL.—Subsequently, as the suit went on, do you remember any other proposition for a reference?—His witnesses had been examined, the suit was then under the direction of Mr. Rawsthorne of Lancaster, and he made a proposition to refer it. He made a proposition, on behalf of the Barrows, to refer it. The first party was Sarah Barrow, the sister of Thomas Barrow. It was revived in the name of Thomas Barrow, and then of Mr. Rogers, the nephew of Thomas Barrow, and now in the name of Mrs. Rogers, the surviving sister of Barrow. The suit is still pending.

I was drawing your attention to the proposition for a reference from the other side; do you remember seeing Mr. Marsden upon that very subject? —I do. Mr. Rawsthorne made the proposition. I went to Hornby, and mentioned it to Mr. Wright, and he told me Mr. Marsden was in the library; he told me I might go to him and ask him. I went to him, and made the proposition that had been made by Mr. Rawsthorne, and he said, "I think this was to have been referred before." I said, "Yes." He said, "I think I offered to refer it to their own attorney." I said, "You did;" and then he said, as they would not refer it to him, then he would not refer it now. I went and told Mr. Wright, and we both thought it better to have it ended; we then went together to Mr. Marsden, and Mr. Wright told me he would endeavour to prevail upon him,—and he refused,

Did you ever prepare an answer in Chancery for him?—Yes, I prepared that; I took instructions from him.

Did you take instructions for the answer in Chancery from himself?—I did.

Now, I ask you whether Mr. Marsden was near sighted?—He was. have known him not recognize me at a few yards distance.

Had he any habit of contracting his brows?—He contracted his brows recognize me.

Digitized by Google

Did that give him any peculiar appearance to strangers?—Yes. He would start almost immediately at you when he recognized you, and then he came abruptly forward sometimes to shake hands with you.

What were his manners; were they gentlemanly or otherwise?—Very gentlemanly; mild, gentlemanly manners.

Polite or rude?—Very polite and mild.

What was his disposition?—Very kind.

With respect to education, was he well educated?—Certainly not, and he frequently complained of that; he more than three or four times mentioned the circumstance to me, and attributed it to his mother's neglect.

Did you know any thing of Colonel Bayley, his stepfather?—No; when a child I knew him, but not since.

Was Mr. Marsden in the habit of reading the newspapers at all?—Yes; and conversing upon the politics of the day.

Did you ever hear him read?—No; but he has told me of paragraphs that he read in them, and told me the substance of the speeches made in Parliament.

What sort of memory had he?—A very good memory, particularly as to dates and persons.

Have you ever known instances of his being referred to in conversation upon the subject of dates?—Repeatedly, and particularly as to persons visiting the Castle; and when Mr. Wright and I conversed together, and differed as to the time of their visiting, we referred to Mr. Marsden, and he set us right.

Have you dined there occasionally?—Very often. A great deal in parties, but generally in their own family way. I never omitted, if I was in the neighbourhood, to go there to dine, without invitation.

You must have personally known him for twenty-two years?—For thirty years. I was above twenty years his attorney, from 1804 to the period of his death. I may say twenty-two years.

During that time did you dine at Hornby Castle only now and then?—A great many times every year. I should say a hundred times.

Have you dined there two or three times a week?—Not on an average.

But have you sometimes dined there two or three times a week?—Yes, for a week together sometimes.

At first, who sat at the head of the table?—Mrs. Wright.

Who at the bottom?—Mr. Marsden.

Was afterwards any change made?—Yes.

What was that?—Mr. Wright took the bottom of the table till grace was said after dinner. Mr. Marsden always said grace, and immediately after that Mr. Wright left the chair and Mr. Marsden took it.

Do you know why it was that Mr. Wright took the bottom of the table during dinner?—Mr. Marsden was a bad carver; the worst that ever I saw.

Was Mr. Wright a good carver?—A remarkably good carver; very quick.

While you were there at dinner, I must ask, was Mr. Marsden convivial or otherwise; did he like a glass of wine?—Yes, he liked wine; but I never used to stay at table long; I generally retired from the table early, for I have not taken wine for nearly twenty years.

Then you do not know so much of his convivial habits as others may do?—No, I have seen him a little excited, but not often.

Now at Mr. Marsden's table did you meet many persons or few?—Al-

Digitized by Google

Digitized by Google

Digitized by Google

most all the gentlemen of the neighbourhood visited him; all the respectable gentlemen in the neighbourhood visited him.

Did you meet there Mr. Carus Wilson of Casterton Hall?—Yes.

Have you met him there once or more than once?—I could not charge my memory as to the number of times, but I have met him more than once.

And Mr. Gibson of Quernmore Park?—Yes.

More than once?—Yes.

Cawthorne, the member?—Yes.

Do you know Mr. Stout, of Lancaster?—Yes.

Who was he?—A magistrate.

And Worswicks the bankers?—Yes, repeatedly I have met them there.

Do you know Mr. Hesketh, the father of the present member for Preston; have you seen him there?—Yes, repeatedly.

Mr. Townley Clarkson?—Yes, he used to be a visiter there.

Mr. James Stainbank, the clergyman?—Yes.

Mr. Bradshaw and his brother?—Yes.

Did you ever meet Mr. Bateman there?—Yes.

Who was he?—A magistrate.

Mr. Greene; have you ever met him there?—Yes.

Who was he?—A Solicitor in Gray's Inn.

Was he the father of the present member for Lancaster?—He was. Joshua and William Hinde I have also met there.

Do you remember the present Bishop of Bath and Wells, (when Bishop of Chester) dining there?—Very well.

Was that a large party or a small one?—A very large party.

Do you know whether Mr. Wright dined at the table that day?—He did.

Who sat at the head of the table then?—Mr. Marsden.

Do you remember Mr. Marsden happening to retire?—Very well.

Did the Bishop take occasion upon that to propose his health?—Yes, he did.

Was it communicated to him?—It was communicated by the Bishop, on his return.

Did he return thanks?—He returned thanks and made a speech, and concluded by drinking the health of Lord Ellenborough, the then Chief Justice.

The brother of the Bishop?—Yes.

Now, Sir, did you know enough of him, during that time, to be able to tell me in what manner Mr. Marsden passed the year; whether he usually went into company or received company; whether, for instance, he was in the habit of going to Giggleswick?—He made an annual visit to Giggleswick and Belle Hill, and he told me he had been there, when he came back again.

Did you miss him from the castle?—Yes, and on his return he told me he had been there. He used to call it his annual visit.

After the death of Mr. Lister Marsden's father, where used he to go; did you ever know him to go to Gargrave?—He used to go to Gargrave to visit the present Mr. Lister Marsden.

Did Mr. Wright go with him on those occasions?—No, he did not; he staid at Hornby. I never knew him go with him to visit in my life.

What were the length of his visits to Giggleswick and Gargrave?—He generally used to fix the day but I could not state the time. He used to fix a period, though he might return before the time fixed.

Digitized by Google

Are you able to say whether the Listers visited him in return?—Frequently; when I first went to Hornby Castle the present Mr. Lister Marsden was part of the family, and lived at the Castle in 1804. He was curate of Hornby chapel and formed part of the family.

That was some time before his marriage?—Yes, some time before his marriage.

What length of time? are you able to state whether any member of that family came pretty much every year?—Yes, old Mr. Lister came frequently every year, or oftener than once a-year; and the present Mr. Marsden used frequently to come, and particularly in the shooting season.

Was the present Mrs. Lister Marsden ever there?—I never saw her there.

Do you recollect who were the members of the family in 1804, when you first went; was there a Miss Tatham a member of the family?—There was.

What was her connexion with Admiral Tatham or Mr. Marsden?—She was a cousin to Admiral Tatham, and a distant relation to Mr. Marsden, but not a cousin to him.

Was she staying regularly with the family?—It was her domicile; she had no other home.

Do you recollect at what time she died?—Three or four years after I was in the habit of going there: about four or five years.

Did she dine at the table?—Always, but not when there was a party. None of the females dined when there was a party of gentlemen.

Do you remember the day that Mr. Marsden died?—Yes, very well.

How were you apprized of it?—A special messenger came to me with a note announcing his death.

Did you receive, Sir, the same day a caveat from Admiral Tatham against the probate?—Yes, I did. I received that before I had read the note; before I had finished reading the note to myself from Hornby.

Is that it? (handing the caveat of Admiral Tatham)—Yes it is.

Do you know the Admiral's hand-writing?—No, I do not. I never saw him write.

Had you seen Admiral Tatham shortly before that?—Yes.

How shortly before that had you seen him?—I saw him the Thursday but one before Mr. Marsden's death.

By GURNEY B.—On what day of the week did he die?—On Saturday, the 1st of July, my lord.

By the ATTORNEY-GENERAL.—Where did you meet the Admiral?—In Rydal. I was returning with the chancellor of Litchfield, who was the commissary of the archdeaconry of Richmond in this diocess, and we stopped to look at Rydal chapel, erected by Lady Fleming. Admiral Tatham came up to him; they were acquainted. He resided near where the chancellor lived, and he spoke to Mr. Law, and Mr. Law introduced me to the Admiral. I had no knowledge of him before. I think I had seen him once. The Admiral, almost immediately after some conversation with the Commissary, said, "I think you are the legal adviser of my relation Mr. Marsden." I told him I was. He said, "he will be alarmed at hearing of my being in the country, but will you be so kind as make my compliments to him, and say he has not a better friend in the world than myself."

Were you aware of the feelings that subsisted between Mr. Marsden and Admiral Tatham before that?—Yes, I was. I never heard his name men-

Digitized by Google

Digitized by Google

Digitized by Google

tioned at the Castle but once in all my life; and then it was mentioned by Mr. Procter.

In the course of your interviews with Mr. Marsden, did you ever learn which of his relations he was most attached to?—I thought I did. I always thought his strong feelings were in favour of Mr. Lister Marsden; it was with that sort of feeling that induced me to believe it; I was confirmed in it. I did not know whether he had made a will or not; but I thought it would be in favour of Mr. Lister Marsden. He once told me that old Anthony (Mr. Lister Marsden's father) was behaving ill to him, but he should never want a friend.

The father of the present Mr. Marsden was not a clergyman I believe?—No.

I believe you have met Dr. Lingard at Mr. Marsden's table?—Yes.

More than once?—Yes, more than once.

For some years before Mr. Marsden's death did you meet him?—No, I did not.

Do you recollect ever having a conversation with Mr. Marsden about Dr. Lingard?—Yes.

Mention the circumstance?—I was at Hornby upon business, and Mr. Wright and I had got our business done before the dinner hour; I walked on the terrace before dinner, and met with Mr. Marsden, and, in conversation Dr. Lingard's name was mentioned. I said I saw him as I came up; he said, "ay, Dr. Lingard is a Jesuit." I said, "I believe he is of that order." He said "he is a Jesuit both in principle and practice; he tells at my table what he hears at Murray's; and, if he does that, he will tell at Murray's what he hears at mine; he shall never dine with me again."

Have you a distinct recollection of that conversation taking place?—Perfectly; I have not a doubt of it.

Now, do you know how long Mr. Procter had been curate of Hornby before Mr. Marsden's death?—He succeeded the present Mr. Marsden, and I should think it was in 1805 or 1806.

GURNEY, B.—We have the date already.

Was Mr. Procter much at Hornby Castle?—O yes, a great deal.

Did you ever attend with Mr. Marsden at church?—Frequently. He has sat with me at Lancaster church; he came and dined with me, and went to church with me; and also I have been at chapel with him at Hornby.

Was he religious, or careless of religion?—Very religious, and very attentive to the service always.

Was he in the habit of taking the sacrament?—I never saw him take the sacrament.

Have you ever conversed with him upon any matters connected with his property?—Frequently about alterations, or, when inroads he fancied had been made upon his property, he used to tell me what had been done. He was at one time very violent, and put out of the way, because Mr. Murray had pulled down the wall which he (Mr. Marsden) had made, a new wall below the park. Mr. Murray asserted that Mr. Marsden had stopped the way, and he pulled the wall down. He gave me directions to take proceedings against Mr. Murray for doing so, and I begged him not to do it, but let it alone; and, if so, he might probably be doing something that he might have a better hold of him for it.

Did you ever converse with him about any of the improvements, either of house or otherwise?—He shewed me where he was going to extend the

Digitized by Google

Castle, and went and put his foot upon the stakes, shewing me it was to be enlarged. He had got several plans made by Mr. Webster of Kendal, the architect, and he had made choice of one rather more florid than another, as it was very similar to the Chapel, in point of architecture.

Do you remember being at Hornby in the year 1824?—Yes.

When Wright was ill?—Yes.

On that occasion did you see Mr. Marsden?—The family had gone to church; and when I got there I saw Mr. Wright, and I went into his room.

Was he ill?—He was very ill indeed in his room.

Did you afterwards see Mr. Marsden?—Mr. Marsden came to me and asked me how Mr. Wright was, and I said I thought him exceedingly ill, and much worse than the family supposed him to be.

What did he say upon that?—He said, "he hoped not, that Mr. Wright had had the management of all his estates and all matters, and if any thing happened to Mr. Wright he did not know what was to become of him.

Have you read Mr. Marsden's will and codicil?—Yes, I have.

In your opinion was Mr. Marsden capable of understanding the effect of those wills, stripped of the legal matters of form?—I have no doubt of it. I never saw any difficulty in Mr. Marsden in understanding any thing I read to him and explained to him, he appeared to understand them completely.

Did you ever receive any letters from him?—Frequently.

Did you keep any of them, or destroy them?—I believe there was one or two of no importance that have been found. I never kept his letters. I did not think them of any importance.

Of course you know a great deal about Mr. Wright?—Yes.

Is he a remarkably polite man?—He is the reverse; his manners are exceedingly abrupt—in his manners almost to every body, very authoritative and very contradictory.

Almost amounting to rudeness?—Yes, quite.

Is it his general manner?—Yes, generally so.

Now, did you find, after the death of Mr. Marsden, a number of letters or copies of letters, in any part of the house?—Yes, in the cupboard under his bookcase in the library.

Who used that room?—Mr. Marsden; it was called his room.

Did any body else go into that room?—I never knew any body else go in there.

You say in the cupboard under the bookcase?—Yes.

I do not know whether you have seen all the letters that have been produced, upon different occasions, in Court?—Antecedently to this time, but not at this time.

Are you aware of any that have been produced that are not scheduled to the answer?—I am not aware of any, but some have been found since.

Do you know what became of the letters, whether they were removed, or remained at Hornby Castle?—No, not that I am aware of, except those I brought down to Lancaster.

Have they been in London?—Yes.

And at York?—Yes.

Were they ever brought here to inspect them?—Yes.

Was there an order to inspect them?—Yes, there was.

Where were they taken to be inspected?—They were at my office.

They have not always remained at Hornby Castle?—No.

Digitized by Google

Digitized by Google

Digitized by Google

How long have they been at your office ?—Ever since the commencement of this suit.

Have you read them ?—The great majority of them. I believe all of them.

You have heard them also read in court ?—Yes.

By GURNEY, B. Were you present at the trial at York ?—Yes, the whole time, and also at the trial at Lancaster. I heard those letters read, and I have no doubt that Mr. Marsden was competent to write those letters ?

By ATTORNEY-GENERAL.—To your knowledge did Wright ever take any steps as to the estate without consulting Mr. Marsden ?—Not to my knowledge; he never did. As to any thing important he never did.

Mr. Sharp, had you the custody, at any time, of the deeds connected with Mr. Marsden's estates ?—Yes.

Where were they found, in your possession or at Hornby Castle ?—They were kept in boxes at Hornby Castle.

Will you produce a deed of the 30th of January, 1782 ?—Yes, (witness searching for it.)

ATTORNEY-GENERAL.—I thought it convenient to pursue the same order as before, even as to the witnesses; it would be convenient to every body.

Is that which you now produce the deed of 1782 ?—Yes, (handing it in.)

I do not know whether you have any abstract, so as to enable you to speak of those deeds as to what they are ?—No.

Your lordship has a schedule of all those deeds ?

GURNEY, B.—Yes, I have.

Mr. Sergeant ATCHERLY.—It is in schedule one.

GURNEY, B.—That is to declare the uses of the fine ?

ATTORNEY-GENERAL.—Yes, my lord. It is to the late Thomas Greene, of Gray's Inn.

Are you able to tell me by whom this deed was prepared ?—No, I cannot; one of the subscribing witnesses was an attorney at Lancaster.

By GURNEY, B.—Sarah Cookson, George Wright, and John Watkinson, clerk to Mr. Greene, are attesting witnesses ?—Watkinson was afterwards an attorney in Lancaster, in partnership with Anthony Atkinson. He has been dead some years.

By the ATTORNEY-GENERAL.—Is Greene alive or dead ?—Dead.

Did Mr. Greene know Mr. Marsden personally ?—Yes, very well; he used to dine there, and occasionally stop there.

Do you know from that memorandum there, (showing it,) as to where the deed was prepared ?—It appears to have been prepared by Greene, in Gray's Inn, from what appears on the back of it, and from what I know of his hand-writing.

Is that Mr. Marsden's hand-writing ? (handing the deed,)—Yes; and that is Mr. Greene's, too.

Was Watkinson afterwards the partner of Mr. Atkinson ?—Yes.

Now give us the deed of the 22d of September, 1783 ?—Yes, (witness producing it.)

ATTORNEY-GENERAL.—This is the counterpart of a lease of a house in the Strand, and it is sealed and delivered in the presence of H. Couperthwaite, clerk of Greene, of Gray's Inn.

Now hand us the deed of the 17th of January, 1788, or the contract, or whatever it is ?—Yes, (producing it.)

ATTORNEY-GENERAL.—These are articles of agreement dated 17th

Digitized by Google

January, 1788, between John Marsden, of Wennington Hall, and William Edmondson, for the consideration therein aftermentioned.

GURNEY, B.—What is the purchase money?

ATTORNEY-GENERAL.—It is £2,450. It is sealed and delivered in presence of James Barrow.

Is that Mr. Marsden's hand-writing?—Yes.

Is that Mr. Barrow's hand-writing?—Yes.

William Edmondson, do you know anything about him?—No.

Did you know Mr. James Barrow?—Very well.

Was he personally acquainted with Mr. Marsden?—Intimately acquainted with him.

You have a knowledge of that?—Yes, I have.

That he was intimately acquainted with Mr. Marsden?—Yes, I have; during my clerkship, Mr. Barrow and Mr. Baldwin were attorneys for Mr. Marsden.

I will thank you for the deed of the 26th April, 1788?—Yes, (handing it.)

ATTORNEY-GENERAL.—This is a release in fee, by way of mortgage, for securing £10,000, with interest, as the deed covenants, and for further security. It is granted by John Marsden to John and Alexander Anderson.

You have looked at the hand-writing?—Yes.

Is that Mr. Barrow's hand-writing?—Yes.

Is that Mr. Marsden's signature?—Yes.

And Mr. George Wright's signature?—Yes.

The consideration is £10,000?—Yes.

By Sir JAMES SCARLETT.—Is this mortgage upon Hornby, the newly purchased estate?—I should be able to tell you in a moment, if you will show me the deed again.

By the ATTORNEY-GENERAL.—Do you know who John and Alexander Anderson, of London were?—No.

GURNEY, B.—They were bankers in Philpot-lane, I believe.

Sir J. SCARLETT.—They were clients of Mr. Bleasdale?

Witness.—Those were transactions previous to my knowledge.

Sir J. SCARLETT.—They were mortgages upon Wennington Hall, which he afterwards sold to Mr. Lister.

ATTORNEY-GENERAL.—It was not in a condition to be mortgaged; even the agreement was hardly signed by that time.

I will thank you for the deed of 22d April, 1788?—Yes, (handing it in.)

ATTORNEY-GENERAL.—This is a release in fee, of Gisburn Hall, and lands thereto belonging. It is granted by Marsden, Esq., to Lister, Esq.

Do you know who that Lister was?—I believe, from report, he was the first Lord Ribblesdale.

That is Lord Ribblesdale's place, Gisburn Park?—Yes.

Do you know that Lord Ribblesdale was acquainted with Mr. Marsden?—I do not know.

Sir J. SCARLETT?—He was abroad at the time.

GURNEY B.—Sarah Cookson, George Wright, James Barrow, Thomas Starkie, and David Kaye, were the attesting witnesses.

Sarah Cookson was the aunt?—Yes, I never knew her.

"James Barrow." That is his writing?—Yes.

Is that Thomas Starkie's?—I do not know it.

Digitized by Google

Digitized by Google

Digitized by Google

"David Kaye." Do you know any thing of it?—No.

ATTORNEY-GENERAL.—Thomas Wilkinson and Robert Storar are witnesses to sealing and delivery by Thomas Lister.

The next is a contract of the 6th of July 1788?—Yes. (Producing it.)

ATTORNEY-GENERAL.—John Marsden, Esq. and Josiah Rimington, in consideration of £2,500. The seals are torn off.

GURNEY, B.—That is cancelled?—*Witness.* Yes, my lord.

Is that John Marsden's hand-writing?—Yes.

Did you know Josiah Rimington?—No.

Did you know John Peart?—Yes.

Who is he?—A banker at Settle. He was in the profession.

He had been an attorney?—Yes, and had retired many years.

I will thank you for the deed of 4th of Nov. 1788?—Yes. (handing it in).

ATTORNEY-GENERAL.—This is by John Marsden and George Mashiter, articles of agreement for the sale of Bentham Moor, consideration £850, signed, sealed, and delivered in the presence of James Barrow.

Is that Mr. Barrow's hand-writing?—Yes.

And that Marsden's?—Yes.

Do you know who George Mashiter was?—He was formerly a servant at Wennington Hall, and when I was clerk. Dowbiggin procured him money. He was the attorney of Mashiter, and used to procure him money upon mortgage.

I will thank you for the deed of 3d July, 1789?—Yes. (Producing it.)

ATTORNEY-GENERAL.—This is a lease and release by way of mortgage. It is dated 30th July, 1789. It is a mortgage in fee of land, &c. within the manor of Hornby, from John Marsden, Esq. to John Lefevre, Esq. The amount is £27,000.

Are those Marsden's signatures?—Yes.

And those Mr. Barrow's?—Yes.

GURNEY, B.—Who is Stephen Tatton?

ATTORNEY-GENERAL.—He is the attesting witness to Mr. Marsden's signature—he and Barrow. He appears to put to one of his attestations, Stephen Tatton, Lincoln's Inn; he is witness to John Marsden's signature to the receipt, and witness to the sealing and delivery by John Marsden. The lease is sealed and delivered in the presence of Stephen Tatton, of Lincoln's Inn, and James Barrow, of Lancaster.

Do you produce the deed of 13th February, 1790?—Yes. (producing it.)

ATTORNEY-GENERAL.—This is the counterpart of the feoffment of certain premises in Botton, close to Hornby, by John Marsden to Mr. Christopher Bland.

Who was Bland?—He was a cooper in Lancaster; he had an estate close adjoining to Hornby.

Do you know whether he knew Marsden personally?—I do not know.

By Sir J. SCARLETT.—Who was his attorney?—The late Mr. Parkinson was Bland's attorney. Mr. Dowbiggin occasionally gave him assistance, but Parkinson was his attorney. Bland is stated in the deed as a merchant, but he was a cooper.

The attesting witnesses are George Wright and John Baldwin; is that Baldwin, the attorney?—Yes.

By Sir J. SCARLETT.—Do you know in whose office that was prepared?—No.

Digitized by Google

ATTORNEY-GENERAL.—The consideration is £900, my lord.

By GURNEY, B.—In whose office are such deeds usually prepared?—The purchaser generally chooses his own solicitor, and I should fancy Mr. Parkinson would have been Bland's.

Sir J. SCARLETT.—He would be a witness then, I should think?

Witness.—No.

ATTORNEY-GENERAL.—Mr. Cuvelje says "never."

Sir J. SCARLETT.—I do not know what gentleman says "never."

By Baron GURNEY.—Is it usual for the party preparing a deed under a sale, to attest the signature of the seller?—It is generally prepared by the buyer's attorney and sent to the office of the seller's attorney, to get the deed executed. The purchaser's attorney occasionally attends, but they are generally sent down.

Sir J. SCARLETT.—Must not somebody attend on behalf of the purchaser to get the money?

GURNEY, B.—It is very unusual to attest the signature by him.

Witness.—You say it is unusual for the execution to be attested by the attorney for the purchaser?—It is done occasionally, but not often.

He sometimes attends to receive the money?—Yes, sometimes. When the deeds are to be prepared he gets them prepared for the execution by the purchaser, the deeds are then delivered to him.

By the ATTORNEY-GENERAL.—I observe in all these deeds (as in every deed I ever saw) there is a receipt for the consideration at the back?—Yes.

Is it usual for money to pass at that time?—Yes, always; the receipt is signed at the time the deed is executed.

Is it not an usual thing for the consideration to have passed before or after, or in various ways?—Where the solicitors have confidence in each other the purchase money is paid over before, or at that period of time when our business was done at Candlemas, and sometimes it was not paid till three weeks after that time.

I will thank you for the deed of 25th May, 1790?—Yes, (producing it).

ATTORNEY-GENERAL.—This is a mortgage, dated 25th May, 1790, by John Marsden of Wennington, and others to the Right Honourable Sir John Eardley Wilmot and his heirs, by way of mortgage, to secure £8,000 and interest, between John and Alexander Anderson, of Philpot lane, London, merchants, on the first part, and John Marsden on the second part, &c.

Is that Mr. Marsden's hand-writing?—Yes, it is.

Signed, sealed, and delivered by John Marsden, in presence of Henry Silverlock; do you know who Henry Silverlock was?—No.

Is that the James Barrow we have been speaking of?—Yes.

Then it is in presence of Charles Cookney; do you know him?—No.

ATTORNEY-GENERAL.—William White is another witness to the execution by the Andersons, whose mortgage it is. The sum is £2,000, to be paid by him. The receipt is given for that, and then it is said "Received of Sir John Eardley Wilmot £8,000" of consideration money; so that Andersons' mortgage was for £10,000, and Marsden paid off £2,000. Sir Eardley Wilmot paid £8,000, so that it is mortgaged for £8,000 to him instead of the Andersons.

Have you got the appointment of a receiver, dated 7th May, 1790?—Yes (producing it).

Digitized by Google

Digitized by Google

Digitized by Google

ATTORNEY-GENERAL.—There are some additional deeds I will put in at the end, so as not to disturb the order observed in the schedule.

GURNEY, B.—Yes, I think you had better do so. That has the same attesting witnesses, has it?—ATTORNEY-GENERAL.—Yes, my lord. This is signed, sealed, and delivered in presence of Henry Silverlock and James Barrow.

You know nothing of Henry Silverlock at all?—No, I do not.

I will thank you for the deed of the 22nd December, 1790?—Yes (producing it).

ATTORNEY-GENERAL.—This is a contract for sale by John Marsden, Esq. to Richard Mansergh, for an estate in Whittington, and the consideration is for £1,200.

Is that Mr. Marsden's hand-writing?—Yes.

Do you know the hand-writing of Reginald Remington?—Yes.

Is he one of the attesting witnesses to the execution by Mr. Marsden?—Yes, he is.

By GURNEY, B..—Do you know where he lived?—At Melling, a village near to Hornby. It is also close to Wennington Hall, it is not two miles from Hornby, and one mile from Wennington Hall.

By the ATTORNEY-GENERAL.—Now the Mr. Mansergh there mentioned is described of the parish of Whittington, where is that?—It is just over the water, two or three miles from Melling.

Do you know who prepared these articles of agreement from any circumstance?—Yes.

Who was it?—I know from the hand-writing of the clerk to the attorney in Lancaster. He was the attorney for the sale of Hornby Castle, his name was Anthony Atkinson. He was Lord Wemyss' attorney.

And concerned in the sale of Hornby Castle to Mr. Marsden?—Yes.

Mr. Sharp, you stated that Atkinson was the attorney for Lord Wemyss in the sale of Hornby Castle, how do you know that?—I know that from a number of papers. There are now papers in the hands of the executors, that have been sent from Scotland, which shew it.

ATTORNEY-GENERAL.—Messrs. Hanrott and Medcalf were the attornies in town; but this was an attorney at Lancaster. The other witness was George Wright. I will thank you for the deed of bargain and sale, dated 6th August, 1791. (producing it.)

ATTORNEY-GENERAL.—This is a deed of bargain and sale, to enable the tenant of the precipe to suffer a recovery of the Hornby estate. It is dated the 6th of August, 1791. It is enrolled in the 32d year of the reign of King George the Third. It is between Charles Shaw Lefevre, and Helena his wife, and Isaac Lefevre, John Marsden, the Right Honourable Francis Charteris, Earl of Wemyss, and the Honourable Francis Charteris, Lord Elcho, George Wright, and Thomas Greene.

Do you know who was tenant of the precipe?—The deed will shew.

ATTORNEY-GENERAL.—I never read a title-deed of my own.

GURNEY, B.—Nor I.

ATTORNEY-GENERAL.—I believe, my Lord, no lawyer ever does.

Now, have you a deed of the 23d of January 1792?—Yes. (producing it.)

ATTORNEY-GENERAL.—This is a lease by Mr. Marsden to William Robinson, of the farm called Hall Barns, for ten years. It is dated 23d January, 1792, for the rent of £210. It is between John Marsden of Wennington Hall and William Robinson of Melling, close by Hornby.

Digitized by Google

The attesting witnesses are George Wright and Thomas Guy.

Who was Guy?—I do not know.

Do you produce a deed of the 25th August 1792?—Yes. (producing it.)

ATTORNEY-GENERAL.—This is an agreement dated the 25th of August, 1792, between John Marsden, of Wennington Hall, in Lancashire, and Reginald Remington, of Melling, of the same county, gentleman. It is not executed by Marsden, but by Remington and George Wright. It is an agreement for tithes. The rent is £40. a-year. Remington would have the other part.

Now I will thank you for the deed of the 5th Nov. 1794?—Yes, (producing it).

ATTORNEY-GENERAL.—This is a deed by John Marsden to Benjamin Ferrand, of St. Ives, in the county of York, Esq. It is executed by John Marsden and Benjamin Ferrand, and the witnesses to their execution are William Holding and George Wright.

Who was William Holding?—I do not know.

You do not know any thing at all about him?—No.

ATTORNEY-GENERAL.—Benjamin Ferrand, of St. Ives, is the other party, and Mr. Marsden agrees to sell, and Ferrand agrees to purchase for £2,000 the manor or lordship of Allerton with Wilsden, the stone quarries, and so on.

Do you know who Benjamin Ferrand was?—I know nothing of him but by representation.

Is that the same person who was afterwards known as Major Ferrand?—Yes.

I will thank you for the lease dated the 6th of June, 1795, of the Camp House estate?—Yes, (producing it).

ATTORNEY-GENERAL.—This is a lease of the Camp House estate by John Marsden to George Matson.

The attesting witness is George Wright; is that his signature as attesting witness?—Yes.

Is that John Marsden's hand-writing?—Yes.

Do you know any thing of who Matson was?—I know that he occupied Camp House, close to Hornby. It is half a mile from Hornby at the top of the hill; perhaps a little more than half a mile from Hornby.

Do you know whether he knew Mr. Marsden?—No; I do not know whether he did or not, but I know that he occupied Camp House for several years.

Can you give me the lease of the 8th of February, 1796?—Yes, (producing it).

ATTORNEY-GENERAL.—This is the counterpart of a lease to Messrs. Leonard, John, and Thomas Willan, of Hornby Park and Hornby Holmes. The rent is £600 a year.

The attesting witness to that deed is Mr. George Wright; is that his signature?—Yes.

It is a counterpart?—Yes; so that Mr. Marsden's signature is not there.

Have you an exchange deed dated 13th February, 1797?—Yes (producing it).

ATTORNEY-GENERAL.—This is an exchange of lands in Wray, between John Marshall and John Marsden, Esq.

Is that Mr. Marsden's hand-writing?—Yes; I know both the signatures.

Digitized by Google

Digitized by Google

Digitized by Google

Who was Mr. Marshall?—He was formerly a merchant in Liverpool, and he resided at Wray, about a mile from Hornby, or rather more than a mile from Hornby. It is a village near to Hornby.

Do you know whether John Marshall was personally acquainted with Marsden?—Yes, he used to hunt with him. Mr. Dowbiggin was the professional adviser of Mr. Marshall during my clerkship.

Ralph Butler, another witness, do you know him?—He was clerk to Mr. Dowbiggin.

I will thank you for the mortgage of the 13th June, 1800?—There it is, (producing it.)

Attorney-General.—This is a release by way of mortage of an estate in Tatham, for securing £2000., and interest. John Marsden, Esq. to John Fryer.

Do you know by whom this was prepared?—I do not know.

Is that Mr. Marsden's hand-writing?—Yes.

It is sealed and delivered, being first duly stamped, in presence of John Dowbiggin and John Pilkington; is that Dowbiggin's hand-writing?—Yes. Who was Pilkington?—He was an attorney at Preston, and his sons are so still. He was several times low sheriff.

As low sheriff of the county he would have to attend here at Lancaster?—Yes, I have seen him here frequently.

Did he know Mr. Marsden?—I do not know.

Did Dowbiggin know Mr. Marsden?—Yes.

Sir James Scarlett.—He was his attorney?—It is unnecessary to ask that every time.

Attorney-General.—I believe I have not put that question before. I have got that Dowbiggin was the attorney, and that this gentleman attended from the time he began, but I never put the question as to whether Dowbiggin personally knew Mr. Marsden or not before.

Gurney B.—Oh, yes, he was the attorney of Mr. Marsden; he was Mr. Sharp's partner.

Did Mr. Dowbiggin know Mr. Marsden?—Yes, intimately. Mr. Marsden has frequently dined at Dowbiggin's table.

Did he personally and intimately know him?—Yes, I have dined with Mr. Marsden at Dowbiggin's table when Bishop Majendie was there.

Dowbiggin was deputy-registrar before you?—He was my predecessor.

I will thank you for a mortgage for £2000., dated 13th August, 1800?—Yes, there it is, (producing it.)

Attorney-General.—This is a lease and release by way of mortgage to secure £2000. by Mr. Marsden to John Yeats, Esq. It is signed, sealed, and delivered, first being duly stamped, in the presence of John Dowbiggin and George Wright.

Are those the hand-writing of John Marsden, Dowbiggin, and Wright?—They are.

Do you know who Mr. Yeats was?—Very well.

Who was he?—He was the uncle of Mr. Bell, the king's counsel and chancery barrister. He resided at Beetham in Westmoreland.

Did he personally know Mr. Marsden?—I do not think he did. I do not think he ever saw him.

I will thank you for the deed dated 14th February, 1801?—There it is, (producing it.)

Attorney-General.—This is from John Marsden to John Yeats, being

Digitized by Google

a further charge for securing £1000. and interest, respectively. The witnesses to the execution are John Baldwin and George Wright.

Have you looked at the hand-writing, to see that that was executed by Marsden, and attested by Baldwin and Wright?—Yes.

I will thank you for the deed of the 13th of February, 1802?—There it is (producing it).

ATTORNEY-GENERAL.—This is a grant of tithes of that date from John Marsden to William Carter. This is executed, sealed, and delivered in the presence of George Wright and Benjamin Robinson, who are the same witnesses to the consideration.

Who was Benjamin Robinson?—I knew him only by reputation.

Did you know any thing at all of him?—No.

Sir JAMES SCARLETT.—He was Mrs. Wright's brother.

Was he Mrs. Wright's brother?—I have been told so. I have no doubt of it, but you know I did not know him.

ATTORNEY-GENERAL.—I really do not know that. God forbid that I should remember all these things.

Have you the assignment of a mortgage dated 12th February, 1803?—Yes, (producing it.)

But first I ask you do you know who Mr. Carter was?—No, I do not know.

GURNEY, B.—He is called a "Lancaster merchant?"

ATTORNEY-GENERAL.—Yes, my lord.

Give me that assignment?—Yes, (handing it.)

ATTORNEY-GENERAL.—This is dated the 12th of February, 1803, and is an assignment of part of the mortgage of Charles Shaw Lefevre, of the first part, John Marsden of the second part, and John Bell of the third part. It is for securing to John Bell £7,000 and interest. I should recognize the name of John Bell by his hand-writing.

The attesting witness to Mr. Marsden's signature is John Dowbiggin; is that his hand-writing?—It is, and that is William Atkinson's; Atkinson is a witness to Charles Shaw Lefevre's execution of it.

Did you know him?—Very well; he was an attorney in Chancery-lane. I was several years in his office.

Was he personally acquainted with Mr. Marsden?—He was.

Who was William Atkinson concerned for?—For Lefevre.

Who is the attorney for John Bell?—I should fancy it was Mr. Dowbiggin; they were very friendly.

Do you know whether John Bell knew Mr. John Marsden?—I do not know it of my own knowledge.

Did you know it from Mr. John Marsden?—Yes, I heard him say they were at school together, at Kirkby Lonsdale.

ATTORNEY-GENERAL.—The consideration of that deed is £7,000.

I will thank you for the deed of the 12th February, 1803?—There it is, (producing it.)

GURNEY, B.—Is the receipt endorsed upon it?

ATTORNEY-GENERAL.—Yes, my lord, it is of the same date. It is a deed of covenant to produce deeds.

Did you see any receipt endorsed upon it.—Yes.

ATTORNEY-GENERAL.—This is an indenture between Marsden and Bell, and there is a covenant to produce those deeds; and then there is a very long schedule of the deeds. It is a deed of covenant to produce papers, and it is executed in the presence of John Dowbiggin.

Digitized by Google

Digitized by Google

Digitized by Google

Did you look at both the hand-writings to see if you are correct?—Yes.

Now produce a mortgage dated 14th February, 1806?—There it is (producing it).

ATTORNEY-GENERAL.—It is a mortgage upon the lands in Hornby and township of Arkholme, for securing £2000. and interest. It is by John Marsden to James Lodge and Miss Margaret Pedder, executors of Mrs. Elizabeth Wilson, deceased.

Is that executed by Marsden?—Yes.

The witnesses are Dowbiggin and Wright. Is it attested by them?—Yes, it is.

Did you know Mr. Lodge?—Yes, James Lodge; he is dead.

Did he know Mr. Marsden?—I have dined with them both at Hornby Castle.

Did you know who Miss Pedder was?—Yes.

Did she live at Lancaster?—Yes.

ATTORNEY-GENERAL.—The consideration of that is £2000., my lord.

GURNEY, B.—Yes, I have it so.

I will thank you now for the deed dated 13th February, 1808?—Yes, (producing it).

ATTORNEY-GENERAL.—This is a deed from John Marsden, Esq. to John Yeats, being a further charge to secure £2000., as well as the £3000. before, with interest respectively.

Was this executed by Marsden?—Yes.

Is the attestation by George Wright and yourself in the hand-writing of George Wright and you?—Yes.

You are one of the attesting witnesses to this very deed?—Yes.

I believe this is the first of the deeds to which you were a witness?—Yes.

Do you produce a deed dated 13th February, 1808, a mortgage of £5000. by Marsden to Wildman?—Yes, (producing it).

ATTORNEY-GENERAL.—This is from John Marsden to Thomas Wildman, dated 13th February, 1808. It is a mortgage by demise to secure £5000. with lawful interest.

Was this executed by John Marsden?—It was.

George Wright and William Sharp are attesting witnesses; did you see that deed executed by Marsden?—Yes, I did.

Pray, Mr. Sharp, as to that last deed, the mortgage by Marsden to Wildman, who negociated it?—I did.

You yourself, did so?—Yes.

Have you got a deed of covenant of the same date?—Yes, (producing it.)

Who prepared that?—I did.

In whose office was it prepared?—In the office of Dowbiggin and Sharp.

Now give me the deed of the 26th January, 1808?—Yes, (producing it.)

ATTORNEY-GENERAL.—This is a deed by John Marsden, Esq., to the Rev. John Tatham, vicar of Melling. It is a lease of the tithe of geese, in the parish of Melling, for 21 years.

Is that relative to nothing but geese?—Perhaps there are some other small tithes included.

ATTORNEY-GENERAL.—It purports to be all the tithes and tenths of geese, goslings, and pigs, arising, or to arise, within the several townships of the parish of Melling, called Roeburndale, Botton, and Wennington.

Digitized by Google

Do you know Mr. Tatham's hand-writing?—Yes, I saw him execute it. I prepared the lease, and was the only attesting witness.

What is the rent of the geese?—I do not know.

ATTORNEY-GENERAL.—It says, yielding and paying five shillings.

Who is the Rev. John Tatham?—He is vicar of Melling.

Did he know Mr. Marsden?—Intimately; he dined in his company often at Hornby Castle.

I will thank you for the deed of 12th May, 1809?—Yes, (producing it.)

ATTORNEY-GENERAL.—This is by Charles Shaw Lefevre, Esq., and John Marsden, Esq., to the Rev. Edward Balme, by way of mortgage for securing £10,000 and interest.

Was that executed by Mr. Marsden?—Yes; it is his hand-writing.

I believe the attesting witnesses are William Atkinson, of Chancery-lane, and George Wright, of Hornby Castle?—Yes; Edward Balme was a client of Mr. Atkinson's. I knew him.

Is that a lease?—Yes.

By Baron GURNEY.—This was to pay off part of Lefevre's mortgage?—It was. Mr. Lefevre and Mr. Balme were clients of Atkinson.

By the ATTORNEY-GENERAL.—Then, before that, did Atkinson know Mr. Marsden?—Yes, intimately.

I will thank you for the deed of 13th February, 1813?—Yes, (producing it.)

ATTORNEY-GENERAL.—This is from John Marsden, Esq., to John Yeats, Esq. It is a further mortgage of the estates in Tatham, in the county of Lancaster, and in Roeburndale, for securing £11,000. and interest, and the consideration purports to be £6,000., in addition to £5000. formerly secured.

Are you the attesting witness to Mr. Marsden's execution of that deed?—I am.

Is Mr. Dowbiggin also?—Yes.

Now, I will thank you for the exchange deed dated 15th October, 1813?—Yes, (producing it.)

ATTORNEY-GENERAL.—This is between Messrs. John and William Atkinson, and John Marsden, Esq. It is a deed of exchange, signed, sealed, and delivered by John Marsden, in presence of George Wright, and Giles Bleasdale.

Is that George Wright's hand-writing?—Yes.

Is that Giles Bleasdale's hand-writing?—Yes.

Do you know who John and William Atkinson were?—They lived at Wennington Bridge-end, near Hornby.

Did they know Mr. John Marsden?—Yes.

Do you produce a mortgage deed, dated 2d August, 1815, for £8000.?—Yes, (producing it.)

ATTORNEY-GENERAL.—This is by John Marsden, Esq., to the Rev. C. G. T. Driffield, to secure £8000. and interest. The witnesses are Giles Bleasdale and George Wright.

Is that Giles Bleasdale's hand-writing?—Yes.

Is that George Wright's?—Yes,

Is Mr. Marsden's hand-writing there?—Yes.

Do you produce a deed, dated 13th May, 1819; a lease of a right of road?—Yes, (producing it.)

Digitized by Google

Digitized by Google

Digitized by Google

Was that prepared in your office?—Yes, it was.

Was it executed by Mr. Marsden?—Yes it was.

I see it is sealed and delivered in your presence; were you the attesting witness?—Yes.

Did you know who the other parties were?—They were the trustees under the will of William Sanderson, Esq., deceased.

There is the name of Brayshaw, Beardsworth, and Anthony Stackhouse; do you know whether they knew Mr. Marsden?—Brayshaw did.

Who was Stackhouse?—I do not know.

Do you produce the transfer of a mortgage dated 14th February, 1825, for £10,000. to Richard Yorke, Esq.?—Yes, (producing it.)

Attorney-General.—This is by the Rev. Edward Yeats, by the direction of Mr. Marsden, to Richard Yorke, Esq., for securing £10,000, at four per cent., for ten years.

Who prepared that?—Mr. Robinson of Settle.

Is he Mr. Yorke's attorney?—Yes, he is.

Do you know who Mr. Yorke is?—He is brother-in-law to Mr. Lister Marsden.

The gentleman who changed his name to Marsden?—Yes.

And Yorke was formerly of the name of Sheepshanks; his father's name was so?—Yes.

Was he sheriff of Yorkshire two years ago?—I do not know. I was told he was. He married the Lady Mary Lascelles. I believe he was sheriff of Yorkshire last year.

Have you the transfer of a mortgage of the same date for £5,000?—Yes.

Attorney-General.—I am sure my friend will not object to the changing of a name such as Sheepshanks to that of Yorke, when our mutual friend, Mr. Sergeant Atcherly, has done so from the name of Jones.

Sir J. Scarlett.—Not when it is for a valuable consideration.

Attorney-General.—I confess I should not hesitate to the change of a name from Sheepshanks.

Do you produce a mortgage by Messrs. Swainson and Sharp, by the direction of Mr. John Marsden, to Richard Yorke?—Yes, (producing it.)

Is that executed by John Marsden?—Yes.

Who were Swainson and Sharp?—Sharp is myself. We were trustees under the will of Mr. Wildman, and in that character we transferred the mortgage, and that is executed by me and Mr. Swainson.

Attorney General.—Now, my lord, those are the deeds executed by Mr. Marsden. I have one or two to add to that number. There is the list of the further deeds, (handing the list to Sir J. Scarlett.)

Have you got a deed of the 6th of March, 1789?—Yes, (producing it.)

Mr. Cresswell.—That is executed by William Robinson.

Attorney General.—He is alive, and is in court, and if you wish him to be called, he will be called.

Sir J. Scarlett.—That may be done by and by.

Attorney General.—I mentioned Robinson's name, and asked who he was. I will call him now, or by and by, as you please.

Sir J. Scarlett.—Call him afterwards.

Attorney-General.—Mr. Sharp has been long under examination; and, as this comes from the custody of other persons, I will now abstain from going further upon that subject with him, as this can be proved by

Digitized by Google

others. Mr. Sharp has yet to prove the hand-writing of some other parties to these additional deeds, if my friend think it necessary. We all know Barrow's hand-writing.

Sir James Scarlett.—It will not be necessary to prove the hand-writing of people that are dead.

Attorney General (to Mr. Cuvelje.)—Hand me in the Schedule of all the deeds that are more than thirty years old at once.

[Here Mr. Cuvelje handed in another large parcel of deeds.]

Attorney General.—This is a lease dated the 19th of May, 1787, executed by the Reverend Robert Playfair and others, trustees of Trinity Hall, to John Marsden, of the parsonage of Gargrave and the Tithe Barn. The next is a contract for the sale of Hornby Castle, from the Earl of Wemyss to John Marsden, dated 29th September, 1787. It is executed by Charteris Wemyss, and T. Charteris Elcho; and the attesting witnesses are John Lancaster, William Dunn, Francis Anderson, and John Anderson, writers to the signet. The next is dated the 1st of May, 1788, from the Earl of Wemyss, and others, to H. Wilmot, Esq., Mr. Thomas Dunn, and Mr. Thomas Greene, to secure £38,000. the residue of the purchase money, agreed to be paid, of £53,000. It is signed Charteris Wemyss, Charteris Elcho, Alexander Gordon, Robert Hay, and Francis Kinlock. The next is a deed of bargain and sale of the Honor and Manor of Hornby, dated 15th May, 1789, by Earl Wemyss, and others, to John Marsden, Esq.

Sir J. Scarlett.—Allow me to look at the former one. (It was handed accordingly.) I see on the back of this that it is sealed and delivered by Lord Elcho, in presence of James Barrow and George Wright.

Attorney General.—The next is dated 13th February, 1790. Messrs. Chamley and Bracken, and Ann Langstreth, to John Marsden, Esq. It is a feoffment of premises in Wennington. This appears to have been executed, and it is sealed and delivered as to Chamley, in presence of George Wright and Thomas Guy; as to Thos. Bracken, by John Baldwin and James Topham; and, as to Ann Langstreth, by Margaret Langstreth and John Swainson, jun., and executed in the presence of John Baldwin and James Topham. There is also a deed of the 15th of May, 1789, in which it appears that Greene is a party. I think that probably does not appear in the schedule, but I was not aware of that.

Gurney, B.—No it does not.

Attorney-General.—The next is dated the 13th of February, 1790—a feoffment of premises in Hornby, Samuel Varley to John Marsden. The next is dated the 16th of November, 1792, Carter and others to John Marsden. It is a feoffment of a messuage and garden in Wennington: it is signed, sealed, and delivered in the presence of John Baldwin and George Wright. The next is dated the 13th of February, 1793, James Barrow, Esq., and others, to John Marsden, granting the dwelling-house, barn, croft, &c., within the manor of Hornby. That is executed by James Barrow. The next deed is the 3d of May, 1793. It is a feoffment of part of the close called the Shire Close, by Bryan Holme to John Marsden, Esq., and the witnesses to it are John Baldwin and John Tatham.

Do you know what John Tatham that is?—It is either the vicar of Melling or his father.

Do you know who Bryan Holme was?—Of Roeridding; he was grandfather to the present Mr. Holme, of London.

Bryan Holme of Roerridding?—Yes.

Digitized by Google

Digitized by Google

Digitized by Google

Was he acquainted with Mr. Marsden?—Yes; he was intimate with Mr. Marsden.

By GURNEY, B.—Is he partner with Mr. Loftus?—Yes.

He is partner of the house that Bleasdale belonged to?—Yes.

ATTORNEY GENERAL.—The next deed is dated the 10th of April, 1794, between Sheldon Cradock, Esq., and others, and John Marsden. It is a release of premises in Arkholme. This appears to have been executed by the parties, and the attesting witnesses are John Day and a great many others. The next deed is dated 6th December, 1794. It is a release of ground called Laid Garth in Hornby, by John Procter, and others, assignees of James Isherwood, a bankrupt, to John Marsden. The attesting witnesses are George Fletcher, John Webster, and Richard Clark, clerks to Mr. Fletcher; and Peter Buttleman and Richard Evans are witnesses to the others signatures. The next deed is dated 23d July, 1795. It is a feoffment of two messuages in Hornby, by Benjamin Hague and his wife, to John Marsden, Esq.; and the attesting witnesses are John Baldwin and George Wright. (To the opposite counsel.) I suppose you will now take the signature of John Baldwin as being proved.

Sir J. SCARLETT.—Yes, we may.

ATTORNEY GENERAL.—The next is dated 22d June, 1796. It is a deed of covenant for the production of deeds as to the manor of Hornby. It is between Robert Dent, Esq. and others, and John Marsden, Esq. It is executed by Robert Dent, Robert Addison, Anthony Atkinson, and Thomas Greene; and is attested by George Tennant. It is signed, sealed, and delivered, by Addison and Atkinson, in the presence of John Park, attorney-at-law in Lancaster.

Witness.—They purchased the manor of Cockerham.

Who was Mr. Tennant?—He was a solicitor in Gray's Inn.

Did you know him at all?—Yes.

He was a partner with Greene?—Yes, he was.

ATTORNEY GENERAL.—The next deed is dated 30th July, 1796. Mr. Thomas Fawcett to John Marsden, a feoffment of three dwelling-houses in Castlegate, in Hornby. The subscribing witnesses are Thomas Carus and Benjamin Robinson. The next is dated the 28th of December, 1797, Thomas Winder to John Marsden, a feoffment of a messuage in Castlegate, Hornby, for £780. regularly executed and attested by Ralph Butler and Richard Samuel White.

Did you know those persons?—White was clerk to Mr. Dowbiggin; Ralph Butler was also clerk to him.

ATTORNEY GENERAL.—The next is Charles Shaw Lefevre to John Marsden, for a re-conveyance of the park, &c., the date of it is the 24th of April, 1800. It is signed, sealed, and delivered in the presence of William Atkinson, attorney-at-law, Chancery Lane, and James Hodgson, attorney-at-law, Chancery Lane. This other one is a covenant from Charles Shaw Lefevre to John Marsden, dated 27th April, 1800. It has the same attesting witnesses as the last, namely, Atkinson and Hodgson. The next is dated 13th August, 1800, James Parkinson to John Marsden; feoffment of a barn, stable, and shippon, near Castlegate, in Hornby. It is signed James Parkinson.

Did you know Parkinson, the attorney at Lancaster?—Yes.

Had he a house near Hornby?—He had several.

Do you know whether he knew Mr. Marsden?—Yes.

Digitized by Google

He was the father of the unfortunate gentleman who was drowned?—He was. He was a native of that part of the country.

Did he know Mr. Marsden?—Yes, perfectly well.

ATTORNEY GENERAL.—The next is dated the 29th of June, 1801. Timothy Parker to John Marsden, Esq., release of premises in Hornby, in the County of Lancaster.

Who was Mr. Parker?—He lived at Hornby Hall.

Is that near Hornby Castle.—It is close by it.

ATTORNEY GENERAL.—The next is James Sawrey.

Who is he?—He lived in Castlegate in Hornby.

Did you ever know him by the name of Captain Sawrey?—Yes. He was the same person that was called as a witness at York.

ATTORNEY GENERAL.—The next is dated the 13th of February, 1802, and it is a release of lands in mortgage to Thomas Charnley, and afterwards purchased by Mr. Marsden. The attesting witnesses are George Wright and Benjamin Robinson.

Do you know who William Bradley was?—No.

ATTORNEY GENERAL.—The next is the 29th of December, 1802; Richard Whormby and wife, to Marsden. It is a conveyance of the stables and the Bull's Head Inn at Hornby. The next is dated the 14th February, 1803. Thomas Giles and another to John Marsden, for the consideration of £401, signed, sealed, and delivered in presence of James Johnson and Thomas Johnson.

Were they clerks to Dowbiggin?—Yes, they were then clerks to Dowbiggin, and afterwards to Dowbiggin and myself.

ATTORNEY-GENERAL.—The next is dated 14th February, 1803. It is a deed by Miss Atkinson and others to Mr. Marsden, for the consideration of £150. It is the feoffment of a dwelling-house in Hornby. The signatures are Ann Atkinson, Thomas Bracken, and Richard Atkinson, and it is sealed and delivered in the presence of James and Thomas Johnson, as to the execution of Richard Atkinson. George Wright, Thomas Bracken, and John Park, as to Ann Atkinson. The next is dated 14th February, 1804; Mr. Tomlinson and others to Mr. John Marsden. A release of cottages and land in Farleton, in the county of Lancaster, for the consideration of £200. It is signed, sealed, and delivered in the presence of Mr. William Sharp. We know his hand-writing, and I need not prove it again. In the next place, we produce two mortgages dated 28th March, 1804; one of them is a mortgage of allotments of Oliver Marton, Esq., for securing £84 5s. 7½d. and interest. The other is a mortgage under the commission of the Hornby inclosures, to John Marsden, by Edmund Tatham, of Cantsfield, in the county of Lancaster, gentleman.

Is that the gentleman who was one of the witnesses to the will?—Yes.

Do you know his hand-writing?—I do.

Is that it? (handing a paper)—Yes; I know that is his hand-writing.

ATTORNEY-GENERAL.—The next is of the same date. It is between the commissioners under the Hornby inclosure act to John Marsden, Esq.

Is that Mr. Tatham's and Mr. Marsden's hand-writing? (handing the deed)—Yes, these are.

One of the attesting witnesses is Thomas Wilson; who is Thomas Wilson?—The late Mr. Wilson, of Poulton, an attorney.

Did he know Mr. Marsden?—Intimately.

Digitized by Google

Digitized by Google

Digitized by Google

ATTORNEY-GENERAL.—Now, my lord, I have got to a deed of the 11th of February, 1806; the attesting witness to this is Mr. Sharp. It is signed, sealed, and delivered by the within named E. Abbotson, in the presence of Thomas Palmer, and others. It is a conveyance from H. Abbotson, and others, to Mr. Marsden; Wright is a party to it, and the witness to Mr. Wright's execution is William Sharp. It is between Mr. George Wright, of Hornby Castle, of the first part, and Elihu Abbotson and William Abbotson, of Manchester, of the other part, and Mr. John Marsden, of Hornby Castle. It does not appear to have been executed by Mr. Marsden at all. The principal conveyance party is Mr. Wright.

Sir J. SCARLETT.—Allow me to take the particulars of it in my notes.

ATTORNEY-GENERAL.—I have no doubt my friend's note will be correct.

Sir J. SCARLETT.—In this list these are stated as purchases made by Mr. Marsden. I have taken down notes as to the purchase money paid in each case; that, of course, from the commissioners, or lords of the manor, and of all other purchases I have taken the amount. Has your lordship got them?

GURNEY, B.—I have got some of them, but not all.

ATTORNEY-GENERAL.—I will take it upon my friend's statement, if he have taken any note of them, when the recital of the deeds was going on. I will admit it, and afterwards correct it, if necessary.

Sir J. SCARLETT.—The schedule in some portions of it gives the sums in this column, but this latter portion of it has no sums.

ATTORNEY-GENERAL.—We thought, I suppose, that the sums were not very important.

Sir J. SCARLETT.—I make this last portion amount to £12,700 12s. 6d. if I have added it up right.

GURNEY, B.—We will take it at that at present.

ATTORNEY-GENERAL.—We are to bring them up to the same date. The next is dated the 14th of February, 1806. Robert Holme to John Marsden, which is a conveyance of two inclosures or parcels of ground near Arkholme, in the county of Lancaster; and there is another of the same date. The witnesses are George Wright and Thomas Buttle.

Is Buttle alive or dead?—He is not dead.

ATTORNEY-GENERAL.—Here is an indenture by the trustees of the turnpike road to John Marsden, to secure £100. on the tolls with lawful interest, signed, sealed, and delivered by John Taylor Wilson.

GURNEY, B.—That is Mr. Wilson who was examined yesterday?

ATTORNEY-GENERAL.—Yes, my lord.

GURNEY, B.—And Mr. Sharp is the other, is he?

ATTORNEY-GENERAL.—No, my lord, I do not find any other. The trustees are the executing parties, and Mr. Procter is one.

Is that his hand-writing?—Yes, that is his hand-writing.

Who was Buttle?—He is a land-surveyor, and he is now in the jail of this town, I believe.

He is alive, is he?—Yes.

Mr. CRESSWELL.—Then you must call Buttle, as he is alive.

ATTORNEY-GENERAL.—Very well. Put these by themselves. Now, the next is dated in 1807, from Shepherd to Wright;—a deed to suffer a recovery, signed, sealed, and delivered by the within named Mr. and Mrs.

Digitized by Google

Shepherd, to Mr. George Wright, attested by Mr. Dowbiggin and Thomas Johnson.

None of these are alive?—No, they are both dead.

That is their hand-writing?—Yes.

Now, as to the next; Mr. Wilson, who was examined yesterday, was a witness to the sealing and delivery of that deed, from James Baines and another to John Marsden. You are a witness to the receipt?—No, to the delivery of the seizon, and George Smith is the other witness.

The next is the 5th of May, 1808, a re-conveyance from Charles Shaw Lefevre to John Marsden. The witness is William Atkinson—he is dead I believe?—Yes.

ATTORNEY-GENERAL.—The next is a release of a close of land between Theophilus Wetherherd and John Marsden, called Kellands, dated 14th February, 1809. The attesting witnesses are George Wright and William Sharp. The consideration money is £328. 8s. The next is dated 2nd January, 1810, and relates to six cottages in Hornby, consideration £250, from William Procter and his wife to John Marsden. The attesting witness is Mr. Sharp. That is Mr. Sharp's hand-writing, which may be admitted now. Here is another by Mr. James Sawrey and his wife to John Marsden, the release of a close of land in Hornby, consideration £585, attesting witnesses William Sharp and James Johnson.

Is that signed by Captain Sawrey?—Yes.

Is James Johnson dead?—Yes; and Sawrey is dead also since the trial at York.

ATTORNEY-GENERAL.—The next is dated 14th February, 1810, a release of two closes of land, the consideration is £783., from Anderson and wife to John Marsden. The witnesses are William Sharp and John Rotheram.

Rotheram was a clerk of your's, was he not?—Yes.

ATTORNEY-GENERAL.—The next is dated 31st August, 1813, from Page to Mr. Marsden. The consideration is £380. The attesting witnesses are John Pennington and Thomas Birkett, clerks to Messrs. Stanistreet and Eaden, attorneys at Liverpool.

Do you know any thing about Pennington and Birkett?—No.

GURNEY, B.—It is not likely he would know them.

ATTORNEY-GENERAL.—I think it right to state that the deed of the 31st of August, 1813, your lordship should strike out, as the witnesses are alive.

Are Richard Willis and Bryan Holme dead or alive?—Willis is living; the other is dead.

That is another deed to which you are attesting witness (handing it)?—Yes, it is.

GURNEY, B.—What is the consideration?

ATTORNEY-GENERAL—.£2,000. The next is a deed from Lodge and Campbell to John Marsden. The witness is William Sharp. I see you are attesting witness to the receipt?—Yes.

Is that the hand-writing of Campbell, a doctor of this town?—Yes.

Did he marry Miss Pedder?—Yes.

It is from Lodge and Dr. Campbell and wife, to Marsden?—Yes.

GURNEY, B.—What is the consideration?

ATTORNEY-GENERAL.—It is £2,000. Here is the receipt.

Is that the receipt for the consideration paid, signed by John Marsden,

Digitized by Google

Digitized by Google

Digitized by Google

and witnessed by William Sharp, his attorney, and John Higgin, the attorney on the other side?—Yes.

(Here the receipt alluded to was read by the Attorney-General.)

Attorney-General.—The next is a deed of the 24th of February, 1820. Messrs Higgin and Willis were the trustees of Bryan Townson, and it is a release to John Marsden of certain closes of land in the township of Hornby, and the receipt is signed by John Higgin.

By Gurney, B.—He is the attorney for the plaintiff in this cause, is he not?—Yes.

Gurney, B.—What is the consideration?

Attorney-General,—It is £1,825. The next is dated 17th February, 1821—The devisees of James Brotherton, the elder, deceased, to John Marsden.

Sir J. Scarlett.—In that former deed Messrs. Higgin and Willis were trustees to Bryan Townson, and, as trustees, they signed that release.

Attorney-General.—Yes; and so it appears upon the back of it. The next deeds I shall mention, as produced, will be the bonds executed by Mr. Marsden. Here is one deed more to which Mr. Sharp was a witness. It is dated the 27th of October, 1804, executed by John Marsden—consideration, £120. Mr. Sharp is a witness. Here is a set of enfranchisement deeds which prove themselves.

Gurney, B.—Have you any more that are scheduled?

Attorney-General.—No, my lord.

Gurney, B.—Here is one that has not been mentioned, to which John Taylor Wilson is a witness.

Attorney-General.—It was put in, but it is out of date in the list.

Sir J. Scarlett.—You have got it in the list, but it was put in at an improper date.

Attorney-General.—I must afterwards call a witness to prove that he witnessed those other two deeds. Now we proceed to the bonds. Here is a series of bonds. All that I have now are above thirty years old.

Gurney, B.—Perhaps it will save time to read the list of the bonds, as formerly produced.

(The following bonds were then enumerated.)

Sir J. Scarlett.—There is one of the 16th of March, 1781, which is not in my list.

By the Attorney-General.—Where is Warton; is it near Hornby?—No; it is seven or eight miles from Hornby. It is now inclosed as part of Hutton.

Gurney, B.—The amount of these, when summed up, appears to be about £22,780.

Attorney-General.—Has your Lordship got one dated 13th February, 1786, from Marsden to Bateman, for £1,400?

Gurney, B.—No, I have none of February, 1786.

Attorney-General.—Here is a bond dated 13th February, 1806, for £2800. In the list it is called £1400. It is granted by Mr. Marsden to William Bateman, and the attesting witnesses are George Wright and William Carr. There is another in September, 1786.

Gurney, B.—Is that the 26th of September, 1786?

Attorney-General.—Yes.

Gurney, B.—That I have.

Digitized by Google

ATTORNEY-GENERAL.—The bond from Mr. Marsden to William Bateman is one in addition.

Sir JAMES SCARLETT.—I do not know whether it be of any value; but the names are torn out of Wright and Cookson, but not of Marsden, in this one. There is also another in the same state.

ATTORNEY-GENERAL.—Mr. Marsden's name, I suppose, is only left in those two instances.

Sir JAMES SCARLETT.—No, there are three which are produced. The one is to Mr. Procter, in which Mr. Marsden's name remains.

GURNEY, B.—There is a receipt on the back of that.

Sir JAMES SCARLETT.—Yes, my lord. That is in Mr. Wright's hand-writing—the whole of that bond.

ATTORNEY-GENERAL.—Yes. How are the others?

Sir JAMES SCARLETT.—I dare say there are receipts upon them.

ATTORNEY-GENERAL.—A great many are receipted.

Mr. CRESSWELL.—Here is another, which is for £1600, upon which there is no receipt.

Sir JAMES SCARLETT.—I will thank your Lordship to look at that one—it will be important by and by. There is no receipt on the back of it.

ATTORNEY-GENERAL.—You will find that, in those instances, where the names are partially torn off, they are the sureties.

Mr. CRESSWELL.—There is nothing on the face of this one to shew that they were sureties.

ATTORNEY-GENERAL.—I think you will find enough of it to shew that.

Sir JAMES SCARLETT.—The amount, I think, is £23,680.

ATTORNEY-GENERAL.—Have the kindness to put them together. Now, I have here a collection of enfranchisement deeds.

Sir JAMES SCARLETT.—These are all the bonds, (handing them back.)

By ATTORNEY-GENERAL.—Do you know the hand-writing of Mr. Lefevre?—Yes.

ATTORNEY-GENERAL.—This is the correspondence which was kept separately between Marsden and Lefevre. I do not know that I need put them all in to be read; but they may be so, if required.

Witness.—Mr. Lefevre was a client of Atkinson's when I was with him.

You have seen all those letters before, have you not?—(handing the letters to the witness.) Yes; those are alternately from Lefevre to Marsden.

By Sir JAMES SCARLETT.—Those were found in the cupboard, I suppose?—Yes, they were there. All the letters were there.

ATTORNEY-GENERAL.—As to the letters that passed between Mr. Marsden and Mr. Dawson, I suppose we may take all these as being proved by Mr. Sharp, as having been copied by Marsden.

Sir JAMES SCARLETT.—They were proved before.

GURNEY, B.—Yes, I see he proved the hand-writing of the correspondence between Wright and Marsden, and between John Marsden and Alexander Marsden.

By the ATTORNEY-GENERAL.—Are those copies of letters in Marsden's hand-writing which purport to be Marsden's, and those in Wright's hand-writing that purport to be Wright's? (Handing them to the witness.) —(Witness examining them.)

ATTORNEY-GENERAL.—I suppose we may take them as being in Mars-

Digitized by Google

Digitized by Google

Digitized by Google

den's hand-writing, as we all know the hand-writing of Marsden now. We may take it *pro forma* almost.

Witness.—Yes, these are Marsden's hand-writing, and those are Wright's, (handing them back in separate parcels.) Those that bear the signature of Marsden are in his hand-writing, and those with Wright's are in Wright's hand-writing.

Did you know George Postlethwaite's hand-writing, an attorney and receiver?—Yes.

By GURNEY, B.—An attorney, where?—An attorney in Lancaster. I know his hand-writing from the book, my lord.

By the ATTORNEY-GENERAL.—Is that in the hand-writing of George Postlethwaite?—Yes, that is his signature.

Did you know the Rev. Oliver Marton; do you recollect him as vicar of Lancaster?—Yes.

Did you know his hand-writing?—I have seen him sign warrants; he was a magistrate.

Do you believe that signature is his?—Yes, that is his signature; but I am not conversant much with his hand-writing.

Do you know Thomas Barrow's hand-writing?—Yes.

Are those four letters in his hand-writing? (handing them,)—Yes, they are.

Do you know James Barrow's hand-writing?—Yes.

Are those two letters in his hand-writing? (handing them.)—Yes, they are.

Do you know Mr. Charles Gibson's hand-writing of Quernmore park?—I should be more conversant with his signature than his hand-writing.

Is that his signature? (handing a document.)—Yes, that is his signature.

Do you know William Richardson's hand-writing, an attorney at Kendal?—Yes, I know it very well. I have sat upon a commission with him, and have corresponded with him.

Is that his hand-writing? (handing a document.)—Yes, it is.

Do you know Mr. Bickersteth's hand-writing?—No.

Did you know Mr. George Barrow's hand-writing?—Yes, very well.

Is that his hand-writing?—Yes. He was clerk in Mr. Baldwin's office when I was clerk in Dowbiggin's.

Cross-examined by Sir JAMES SCARLETT.—Mr. Sharp, I must trouble you with a few words; I am sorry to give you the trouble in your present situation; Mr. Baldwin and James Barrow were partners, were they not?—They were.

Did Mr. Baldwin and Dowbiggin become partners?—They did.

Was that upon James Barrow quitting the business?—No, not immediately; Baldwin practised alone, and then he joined Dowbiggin.

Dowbiggin became the party who transacted the Hornby Castle affairs?—Yes.

You became his partner?—Yes.

When did you and Dowbiggin separate?—We continued till 1820.

And you yourself continued afterwards?—Yes.

Now, I observe, that by these deeds you produce, Mr. Marsden was engaged in numerous pecuniary transactions to a great extent?—He was.

Were you and Dowbiggin his attorneys, or Mr. Wright's attorneys?—We

Digitized by Google

were his attorneys, and Mr. Wright's attorneys also. We did his business, as well as Mr. Marsden's.

Who kept Mr. Marsden's accounts?—I should say Wright; I really do not know; I know nothing of who kept the accounts.

Did you ever see any accounts?—I have, I have seen the books.

Where have you seen them?—In Mr. Wright's room.

Did Mr. Wright keep a clerk?—He did,

Do you remember George Smith being his clerk?—Yes.

Sir James Scarlett.—Where is the gentleman who yesterday produced those presentations to livings?

Sergeant Atcherly.—That was the witness Topham.

Do you know Smith's hand-writing?—Yes, I fancy I do.

Is that his hand writing? (handing a paper.)—I really do not know; it is not the character of his hand-writing, as it strikes me at present. I do know this hand-writing. I think at present this is not his character.

What is the date of that instrument?—It is dated the 8th of January, 1806. I do not know the hand-writing of that.

Look at that, is that his hand-writing? (handing a deed.)—Do you mean the body of it?

Yes?—I should think it was not.

Do you know whose it is?—No, I do not. I should say it was not his hand-writing.

Did he write a good hand?—He wrote a remarkably good hand, and does still.

He was Mr. Wright's clerk, was he?—He was.

How long was he his clerk?—He was there in 1804. I should think he had recently come, at that time.

Was he not his clerk for thirty years?—He was clerk in 1804, when I first took the management and direction there professionally; he was clerk then. I do not know it as a fact, but I understood he came in 1803.

Be it so—and he continued? Is he in Mr. Wright's service now?—He is.

Did he (Smith) live at the Castle at Hornby?—I am not sure. He lived there, I think, till his marriage, but I cannot speak as to the fact. I saw him almost constantly when I went there, but whether he lived in the house I do not know, but I think he did.

You had him at York, had you not?—He was there.

But you did not examine him?—No, he was not examined.

What was his occupation when you saw him?—He was clerk to Mr. Wright; he was his assistant in looking after the workmen, and keeping accounts, as I understood.

Very well?—I have not heard any body say so, but that was my understanding.

You have been often in the room where he was?—No, I have not been often where he was, till within these last two years; perhaps the last five or six years.

By Gurney, B.—Since Mr. Marsden's death, do you mean?—Yes, I do not recollect that I was ever in Smith's room antecedent to the death of Mr. Marsden.

By Sir J. Scarlett.—But you have seen him antecedently to that?—Yes, among the workmen.

Digitized by Google

Digitized by Google

Digitized by Google

You said he kept the accounts?—Yes, I understood so.

Now you describe Mr. Marsden as a person you knew very well, and very intimately; did you ever transact any business without Mr. Wright's authority?—I transacted business under his direction certainly.

You do not understand my question; did you ever transact any business for him without the authority of Mr. Wright?—Oh, yes, I have, certainly.

I wish you to recollect yourself; have you a better memory about the facts now, than you had on the last two occasions you were examined?—Not a better memory, but I know he gave directions to send for a writ for Murray after he pulled down the wall.

As you did not approve of that business you declined it?—I did not approve of it.

Did you ever transact any business for him without the authority of Wright?—I do not know that I did without his knowledge.

Did you ever transact any professional business for Marsden without the authority, concurrence, and instructions of Mr. Wright?—I do not think I ever did. (This excited some noisy sensations in the feelings of the audience.)

GURNEY, B.—If there be not the most strict silence, I shall not suffer any one to remain here.

Witness continuing.—I say without his concurrence. I put it so; I have taken instructions from Mr. Marsden himself; but Mr. Wright knew afterwards I had taken those instructions.

Did you ever transact any business for Mr. Marsden without Mr. Wright's direction?—No, not without his knowledge. I do not know that you should think sanction necessary; I did not think it necessary.

Do you mean to swear that you would have undertaken any important suit in law or equity without Mr. Wright's sanction?—Not without his knowledge.

I say, Mr. Wright's sanction; if Wright disapproved of it would you have done that?—I would have done it.

Sir JAMES SCARLETT.—We will hear that from somebody else.

ATTORNEY-GENERAL.—Is that a mode of treating a respectable gentleman?

Sir JAMES SCARLETT.—We will come to that more particularly by and by.

He actually gave you instructions for an answer in Chancery, when Mr. Wright was sequestrator for Mr. Marsden and Barrow?—He did.

Did you not say before that Mr. Wright had paid the whole to Mr. Marsden?—Yes.

Did you ever see Mr. Wright pay money to Mr. Marsden?—No, I did not.

Did you ever know Mr. Marsden keep any money?—He had money.

Where did he keep it?—I do not know.

Had he a banker?—No.

Who supplied him with money?—I do not know.

Did he ever pay you any money?—Not but when I settled bills for him. He used to dine at the meeting of the clergy, and when he went away before the party broke up he desired I should pay his bill, and he paid me again.

What answer had Mr. Marsden to give to that bill in Chancery you spoke of—do you say that he gave you instructions to receive money of Mr. Wright?—No, he settled the account himself.

Digitized by Google

The proceedings were all matters of mere form ?—Yes.

There was a *levari facias* and a sequestration ?—Yes.

What matter was there within his own knowledge that you and Mr. Wright did not know ?—I should think none within his knowledge that Mr. Wright did not know.

You mentioned a great many persons that dined with him ?—Yes.

Such as Mr. Carus Wilson : is he alive ?—Yes.

Mr. Stout, the magistrate : is he alive ?—Yes.

Dr. Majendie, for merly the bishop of Chester : he, I believe, is not alive ?—He is dead. He was afterwards bishop of Bangor.

You were his deputy commissary ?—No, Dowbiggin was deputy-registrar and commissary. Mr. Dowbiggin was deputy registrar since.

You are so, and have been so since his death ?—I am now deputy-registrar. I was not then deputy-registrar.

Now, come to the bishop of Bath and Wells, who was formerly bishop of Chester : were you deputy-registrar when he the bishop dined with Mr. Marsden ?—Mr. Dowbiggin was.

You described that dinner, and that Mr. Marsden made a neat and appropriate speech upon his health being drank, and gave Lord Ellenborough's health ?—Yes.

You recollect that well ?—Yes.

Did you not, when you were examined before, say you had no recollection of it ?—I do not recollect that.

Do you not recollect my saying to you, " I wish you would report the speech ?"—I do not remember it.

Then I ask you, did you not say, " I wish I could remember it, but I know he thanked the bishop for the honour he had done him in proposing his health, and also in dining with him ?"—Yes he did.

When he returned the compliment by drinking the health of his brother and his family ?"—I really do not remember.

Or really do not know ?—I do not recollect that I said so.

Did you state that he had proposed Lord Ellenborough's health ?—I do not recollect whether I did or not.

You now recollect that he at that time gave Lord Ellenborough's health, but did not then recollect it : how came you to say, " I really do not remember it—I do not know ?"—I do not recollect how the question was put to me.

You would have required a leading question upon that point, would you ?—No.

Did not Mr. Pollock put it to you, as a leading question, when you said you wished you could recollect the speech when he returned thanks for the honour the bishop had done him in drinking his health ; and when you were asked whether he returned the compliment to the bishop and his family, you answered, " I really do not remember it ?"—I do not recollect it, nor do I recollect the question being put.

You say you remembered the fact at that time ?—Yes.

But you do not remember whether you stated it ?—I do not recollect. It did not perhaps occur to me, but I recollect his drinking the health of Lord Ellenborough.

You mentioned the story as to Dr. Lingard ?—Yes.

You mentioned it at the trial at York, and here, the last time ?—Yes.

Digitized by Google

Digitized by Google

Digitized by Google

Did you not know that Dr. Lingard was coming as a witness for Admiral Tatham at York?—No, I did not.

Had you not seen him at York?—No, I had not.

Had you not seen him at York before you gave that evidence?—I do not remember that I had. My time was so fully occupied at York that I do not recollect that I saw him.

You say you do not recollect having seen him at York before you were examined?—I do not recollect that I did.

I ask you again, were you not aware that Dr. Lingard was at York, before he was examined?—I do not recollect, but had I seen him at York I should not have anticipated that he was to be a witness. I am not aware that I saw him there.

I agree to that, that you could not suppose it possible he was to be a witness?—I wish to conceal nothing.

Did you not tell me the last time, in answer to that question, "I was not aware that he was at York?"—I am not aware that I did, but I was not aware that he was to be a witness.

But I asked whether you were aware he was at York?—I should know then better than I do now. I was not aware that he was coming as a witness.

Were you aware that he was at York?—I was not aware that he was at York.

Attorney-General.—I have no note of that at all.

Sir James Scarlett.—It is in the short-hand writer's notes.

Attorney-General.—But when?

Sir James Scarlett.—Before he gave his evidence.

Attorney-General.—It is by no means important.

When was that conversation you represent with Marsden as to Dr. Lingard?—Several years before his death; four or five years, perhaps. I should say three or four years: I cannot tell. I could not fix the period so well as you can.

Did you not say, at the last trial, one or two years?—It was a year or two before his death.

Gurney, B.—He said, nine or ten years ago.

I believe you said nine or ten years ago the last time?—I have no doubt of the fact, but I do not know the time.

I would take the conversation to have been about ten or eleven years ago?—I should think it might be so; it was a few years before his death. I should say it was four or five years before his death.

He died in July, 1826?—Yes.

Had you dined at his table with Dr. Lingard?—Yes.

Shortly before?—Not shortly before: some time before.

How long before?—I do not know. I could not fix the date. I have dined more than once in company with Dr. Lingard at Hornby Castle.

Now we will come to another subject; have you produced here all the deeds that Mr. Wright has possession of, that Mr. Marsden executed; that Wright has possession of?—I really do not know, as my health would not allow me to arrange them.

But you recollect about a mortgage to Bleasdale of £13,000? Yes, I know of that: I have seen that.

Is it produced?—Is it not there?—I do not know whether it is there. I have seen it.

Digitized by Google

Was it prepared in your office ?—No, it was not.

You have seen it in Mr. Wright's possession have you ?—No, I saw it in Bleasdale's, but I have not seen it since.

Do you know that Mr. Wright is Bleasdale's executor ?—He and his son are his executors.

Do you recollect when you first saw that mortgage in Bleasdale's possession ?—No, I do not know upon what occasion I saw it, but I know I have seen it.

ATTORNEY-GENERAL.—I should be sorry to object, but if my friend mean to make comments upon that deed, this is not the way to prove it. You must give us notice to produce it, and make it part of your case. This is not the time to call for it.

I merely want to know the fact that there is such a deed ?—Yes, there is such a deed. I saw it in Bleasdale's possession.

It was inquired after, the last time ?—Yes, I believe it was.

Do not you recollect saying that you directed all the deeds to be produced ?—Yes : I have no wish to conceal any thing—I have not.

You are very candid. Were you aware that Mr. Bleasdale was Mr. Wright's or Mr. Marsden's attorney ?—No, I do not consider that he was their attorney.

Mr. Bleasdale and Mr. Wright were very intimate, were they not ? You have described Mr. Wright as a man who was abrupt, rough, contradictory, and rude ?—He was.

He was steward to Mr. Marsden ?—Yes.

Did his wife and family live in the house ?—Yes, they did.

He dined at the same table with him ?—He did.

Do you know what arrangement they had; what allowance was made to Mr. Wright ?—I do not know.

You have been a great deal at Hornby Castle ; did you ever know Mr. Marsden give directions of any kind; did you ever know Mr. Marsden hire a servant ?—No, I never knew any one hire a servant.

Did you ever know him discharge one ?—No, I never saw a servant either hired or discharged.

You are not able to inform the jury whether Mr. Wright hired or discharged the servants ?—Not at all ; I do not know.

Did you ever see a servant paid his wages ?—No.

Was Mr. Marsden a good accountant ?—I really do not know.

You have no reason to think otherwise ?—I do not know of his keeping accounts at all.

You have no reason to think otherwise, or that he was not a good accountant ?—No, I have not.

Then, according to your opinion, he was competent to settle his accounts with Wright ?—Yes, I think he was; after the accounts were made out, he might judge whether they were right or wrong.

Did you ever deliver a bill to him ?—No; but to Wright.

Who paid them ?—Wright.

Did you ever know him add up a bill ?—No.

Then you only judge of his ability to do so, from your conversation with him ?—Certainly.

I see that he has had more occasion to execute deeds, and paying for the purchases of estates, than any client you had ?—No.

Did you ever know him make any contract ?—No.

Digitized by Google

Digitized by Google

Digitized by Google

Or interfere in borrowing money ?—I have heard him speak of what he owed to different people, such as Bell and Yeats; I know he spoke of owing them considerable sums of money.

But you never knew him present when any contract was made on his behalf ?—I never was present at any contract made for him.

I thought it possible that you might be so, as his attorney ?—I never was. I do not know that I ever was.

Were you ever present when he paid a tradesman's bill ?—Well, I have a faint recollection of his paying a tradesman's bill, but I am not quite sure.

We will be glad of your faint recollection; who was the tradesman ?—I do not recollect.

Nor the time ?—No, nor the time.

Nor the amount ?—Nor the amount.

Nor the nature of the bill ?—No; I only think I have a faint recollection of his settling accounts with somebody. I should never have mentioned it unless I were asked, as my recollection of it is so faint in my mind.

Neither the amount nor the place can you tell ?—No, I cannot tell the place at all.

He used to come to see you at Lancaster, and dine with you ?—Repeatedly.

Did he come to your office ?—Yes.

Upon business ?—No.

What did he come to the office for ?—He called upon me. I was generally at the office, and he used to come to me in the office.

You dealt with him so frequently that you must have found him rather an agreeable companion ?—I never found him a disagreeable one.

He was not a bad client ?—Both you and I know he was not a bad client.

I do not recollect that he ever came to a consultation ?—I believe he was at one consultation; I do not know whether you had a brief or not.

Will you swear he ever came to a consultation; you spoke of it the last time ?—I never recollect his coming often, but I think he came once. I do not know whether you were counsel or not.

As he was a man who received bishops and magistrates at his table, and gave great entertainments, did he ever invite the judges ?—I never remember the judges dining with him, but he may have invited them. I have dined there with Baron Wood, and many of the bar: several of them.

When he was Mr. Wood ?—Yes.

Did you ever meet any body of the bar except Barrow and Clifton ?—Yes, Mr. Wood: I do not recollect that I ever met any others.

Wood, Barrow, and Clifton, are the only ones ?—Yes.

Did you know Mr. Clifton ?—Yes.

He was a great friend of Barrow's, was he ?—I do not know if he knew him particularly well.

Do you remember Mr. Fitzgerald ?—Yes I do, but I do not remember his being there. I remember his being upon this circuit. I was a native of Lancaster, and used frequently to come to the court. I knew the counsel then more than now; they were not then so numerous. I was then a clerk, and I knew his person perfectly well, but I do not recollect his being at Mr. Marsden's, at Hornby Castle, at all.

Digitized by Google

Were you ever at Wennington at all ?—Not in Mr. Marsden's time—never.

You know the transaction of the sale of Wennington to Mr. Lister ?—I do not.

That is a deed not produced here, I see ?—I know nothing of that transaction.

You do not know of Lister paying £27,000 for it ?—No.

You knew Miss Tatham ?—Yes, I knew her.

Do you know when she died ?—She might perhaps live seven or eight years after I began to go to Hornby Castle, which was in 1804, and she might be there seven or eight years.

You supposed her will was made by Mr. Dowbiggin ?—Yes I did.

Do you suppose that now ?—I should think so, but I do not know.

Do you know Mr. Bleasdale's hand-writing ?—I do.

Look at that, and then say if that be or not his hand-writing ? (handing the will)—It is.

Who are the witnesses ?—George Smith and Thomas Waller; I see Mr. Dowbiggin subscribes it as a witness.

You know that Wright got her property ?—I have heard so.

Of course, you do not remember Mrs. Cookson ?—I do not at all.

Do you know whether Mr. Wright got her property ?—I do not at all know what he got.

Mr. Wright had the Danby rents ?—Yes, I have heard so. They are some rents in Yorkshire. I have heard him speak of them.

Were they Miss Tatham's property ?—Yes, they were.

Now, Mr. Sharp, I will be obliged to you to tell me whether you know Mr. Wright has any property at Heysham ?—Yes.

Did he not pay for that £4,625 ?—I cannot tell what he paid for it, but I made the title deeds.

He bought property lately at Heysham ?—Yes, several properties at different times.

Has he built a house for himself there ?—It is his house certainly.

Did he build it ?—Yes he did.

What is it worth, do you think ?—I do not know; I could not put an estimate upon it.

Do you know the estate he has, called Lower Snab, upon the north side of the Lune ?—Yes.

Did he purchase that ?—Yes, there is no doubt he did.

Do you know the value of that estate ?—I do not know the estate. I have been at the houses, but not over the estates in my life, nor any part of them.

Then you have no idea of the value of that estate ?—No, nor any part of his real property.

Do you know the estate he has at Gressingham Moor ?—Yes; he has an estate there.

You will be surprised to find it is worth £7,000 ?—I should think so too.

Do you know of any estate given him by Mr. Marsden ?—No, I do not.

At Eskrigg, has he any estate of which you made the purchase ?—Yes, there is a croft or paddock there; I know he has.

Do you know of any estate he has at Bentham ?—I do not know it, but I have heard him speak of it, at Graystone Gill.

Digitized by Google

Digitized by Google

Digitized by Google

It is the same place?—I heard him speak of it.

Do you know whether he has several mortgages upon different estates?—That I do not know. I do not believe he has a mortgage upon any estate.

You do not know any thing of his personal property?—No, I do not know his personal property.

Do you not suppose it to be £12,000, or £14,000?—No, I do not remember that I applied that to the personal estate, but to the real estate. I do not recollect; I have no knowledge of his estates, except that I was at Higher and Lower Snab; I knew those were his estates.

Do you know whether his wife had any fortune?—I do not.

Do you know whether her father had any fortune?—I know he had some property at Melling.

She had several brothers?—Yes.

One of them was clerk to Mr. Wright, was he not?—I do not know it.

You spoke of a reference once proposed upon some dispute with Barrow, as to a sequestration; I wish to ask you whether you did not communicate the purport of the letter you received for proposals of reference, to Mr. Wright?—I named it to Mr. Wright immediately on my going to Hornby.

Pray did not Mr. Wright instruct you to state that he begged to decline interfering with the progress of the cause?—No, I do not recollect that he did. I recollect his referring me to Mr. Marsden.

Did he not instruct you to state that he begged to decline interfering in the progress of the cause?—I do not recollect that he did.

I ask you whether he did not instruct you to state that he, Mr. Wright, had made several offers to Wilson, and they were declined?—No, I had not any such authority.

Had you Mr. Marsden's authority to state that?—Mr. Marsden desired that it should be referred to their own attorney.

Did not Mr. Wright make that proposition first?—I do not know.

You do not know what passed between Wright and Wilson upon the subject?—No, I do not, nor do I think that any thing did pass.

Have you no memorandum in your book; are you in the habit of keeping copies of your letters?—When Dowbiggin and I were in partnership, we did not keep a letter-book, but since that, I have kept one. We ceased in 1820.

Pray, Mr. Sharp, did you ever see Mr. Marsden write a letter?—I never did.

Were you not surprised to find that there were so many copies of letters of his?—I certainly was.

Did you know he was fond of writing?—No, I did not; I should have said he was not fond of writing.

Do you know George Smith you have already mentioned; but do you know whether there was a person of the name of Waller in Marsden's house?—Yes.

Thomas Waller?—Yes.

Was he at York also?—Yes.

What was his capacity in Marsden's house?—His servant.

How long was he his servant?—Long before I was there; he was vant at Wennington Hall.

Digitized by Google

How long did he continue; till his death?—No; he left several years before.

You had him at York?—He was there.

Is he alive?—I do not know that he is dead.

Did you send him away from York?—I did.

I observe there is a deed that my friend returned to you, attested by one, of the name of Buttle?—Yes.

That is not put in at present?—No.

Who was he?—A surveyor, and he is now, I believe, a prisoner in this jail for debt.

Did you send him to York also?—No. He did go to York, certainly; I wished him to go, but I could not keep him sober; he was in a continual state of drunkenness. I was desirous to have him. I employed a man on purpose to keep him from drinking, but he could not keep him sober.

You know that the rule of this jail is to admit no spirits at all?—In all jails I believe that is so.

But I speak of this jail?—I believe so.

Have you been ever under sheriff?—Never.

Have you ever known Mr. Marsden struck for a juryman upon any list?—No, I have no knowledge that he ever was.

You should have had no doubt of his competency?—No, I had no doubt of his competency, but I know he would not have been very willing to come.

Sir J. Scarlett.—So are all jurors, I believe, unwilling to come.

Attorney-General.—That is not exactly so. There are two gentlemen, Mr. Waddington, and Mr. Gibson, whom you know in London, who, it is well known, are not reluctant to come.

Re-examined by the Attorney-General.—Do you know whether Mr. Marsden was averse from business, or fond of it?—He was averse from business.

Do you know about how old is George Smith?—I should think he was pretty nearly fifty.

He is between forty and fifty?—Nearly fifty.

Did you ever see him dine at Mr. Marsden's table?—I never saw him and Mr. Marsden in company. I have been walking with Mr. Marsden when he met him, and he touched his hat and passed us.

Except in that way, did you ever see them together?—Never.

You have been asked whether Carus Wilson is alive; do you know what state of health he is in?—He is in bad health. I called upon him myself, and I know he is in bad health.

Mr. Stout, of Lancaster, in what state of health is he?—He is nearly blind; he is not in good health.

You were asked about Mr. Marsden attending a consultation, and you did not know that Sir James Scarlett was engaged in the cause. Our note is to this effect, upon your former cross-examination, that he did attend the consultation. I appeal to your lordship's notes. Your lordship will find the nature of the action stated, and that Mr. Wright was defendant in the suit, and that Mr. Marsden was at the consultation.

Baron Gurney.—I shall find it presently (searching his notes.)

Attorney-General.—He said, in his former examination, "he once came, to my knowledge, to a consultation."

Digitized by Google

Digitized by Google

Digitized by Google

Baron GURNEY.—I find it stated "he did not come to hear the trial."

ATTORNEY-GENERAL.—It is in the cross-examination. The suit is now in the name of Mrs. Rogers.

Baron GURNEY.—I do not find it. He was not now asked what he said then.

Sir J. SCARLETT.—Yes, my lord, I did. He said he was not sure that he ever came to a consultation.

ATTORNEY-GENERAL.—I have no other question to ask Mr. Sharp, my lord.

Sir J. SCARLETT.—I wish your lordship to ask the witness, does he not know that Mr. Carus Wilson was at the Appleby assizes, this year.

Witness.—I do not know.

By the ATTORNEY-GENERAL.—Have you any reason to know any thing about it?—No.

By Baron GURNEY.—About the interview, and the conversation as to Dr. Lingard, have you any particular fact in your life that you can refer to, to know when that was?—No, I was so frequently at Hornby Castle, that I cannot fix the time at all. I have no doubt about the fact. If I had any thing to fix the date, I should be glad to do so.

The ATTORNEY-GENERAL (to his lordship).—One other question I wish to ask, whether he, Mr. Sharp, had not, in his depositions stated, long before that, the same fact.

Baron GURNEY.—I cannot ask him that question.

ATTORNEY-GENERAL.—If that be not put, your lordship will please to ask him whether he stated that fact at York, or the last time.

By Baron GURNEY.—Did you state that conversation about Dr. Lingard in your evidence at York?—Yes I did, my lord.

ATTORNEY-GENERAL.—Did he do it for the first time?

Baron GURNEY.—There was no other time he could state it, but taking the original evidence before the trial at York, and that would be asking the contents of a written paper.

ATTORNEY-GENERAL.—If I were to present that paper by way of proving the fact, I should be told it was not evidence of the fact. Has your lordship any further questions to put to this witness?

Baron GURNEY.—No, I have not. It is necessary that I should now call your attention to the letters and other papers which have been put in *pro forma*. I may ask him a question as to some of these.

By GURNEY, B.—Have you got the will and codicil of Mr. Marsden?—I have.

Then you may hand them in?—Yes (producing a small red leather box containing the will and codicil. Your lordship will observe that the will is in my custody as deputy registrar.

Was that the box it was in, when found?—Yes, my lord, that was the box Mr. Marsden kept it in.

Is this the box that was found at Hornby Castle on Mr. Marsden's death?—Yes. There is also the envelope that surrounded the other document, (alluding to a large sheet of paper.)

Is that the duplicate that Mr. Procter had?—No.

Are these the documents that were produced at York, and at the last trial here?—Yes, at both; they are the same papers.

Were those papers, or either of them, put into Bleasdale's hands when

Digitized by Google

he gave his evidence upon the first trial?—Yes: the one that I produced as deputy registrar.

By Sir JAMES SCARLETT.—This is the one that was in the red box?—Yes: and that brown paper is the envelope of the will that I then produced, and that was in the possession of Mr. Procter. The other was in possession of Mr. Marsden.

By Baron GURNEY.—The other was in the box?—Yes, without any envelope.

Did you find that after the death of Mr. Marsden?—Yes: the key of the box was in Mr. Marsden's breeches pocket. I took it out of his pocket after his death.

ATTORNEY-GENERAL.—Mr. Sharp was examined first at York, and stated the fact as to the key, and that was the way that Mr. Justice Park anticipated that question. Here are the instructions for the codicil to the will, in Mr. Marsden's hand-writing. I do not know whether it should be read again, or whether it may be taken as read. I having already read it. I do not know whether my learned friend has a copy of it, or would wish to hear it again.

Sir JAMES SCARLETT.—I do not know whether we have a copy of it or not.

Baron GURNEY.—I think I took a note of it, but I do not think I have a copy of it.

ATTORNEY-GENERAL.—There is a copy of it (handing it up to his lordship.) Then we need not keep you, Mr. Sharp, any longer, I suppose.

Mr. Sharp.—Should I leave the will, my lord?

Baron GURNEY.—Yes, certainly, you leave it officially. I remember an instance where an officer of an office like your's brought into court certain papers sealed up, and he was struck with astonishment when Lord Ellenborough ordered the seal to be broken, and the document to be left in the hands of the clerk of the court for the rest of the day.

ATTORNEY-GENERAL.—In point of form, I must call your lordship's attention to the documents we now take, as being read, without reading them again. There are various sets of letters; there are Charles Lefevre's letters, and Mr. Marsden's answers; two letters from George Postlethwaite; one from Oliver Marton, vicar of Lancaster; four from Thomas Barrow; two from James Barrow; one from Charles Gibson, of Quernmore Park; two from Mr. Richardson, attorney at Kendal; one from George Barrow; one from the Rev. Mr. Ellershaw, whose hand-writing was proved yesterday. I mention them, as I do not propose to read the letters again. I beg your lordship to take a note that the letters between Mr. Wright and Mr. Marsden are to be taken as read. As to the letters between Mr. Dawson and Marsden, and Mr. Croft's letters (whose hand-writing was proved), I do not propose to read them again; and then there is another set of letters called Mr. Greene's letters. I think that is all. Mr. Sharp may be considered as proving the letters in Mr. Marsden's hand-writing in that correspondence with Mr. Alexander Marsden. I read but one of those letters. The rest will have to be read.

Sergeant ATCHERLY.—Call the Rev. Thomas Yates Ridley.

The *Rev. Thomas Yates Ridley*, sworn.—(Examined by Mr. Serjeant ATCHERLY.)—I believe you are rector of Heysham?—I am.

Digitized by Google

Digitized by Google

Digitized by Google

How far is that from Lancaster?—It is about six miles from Lancaster.

It is in the County of Lancaster?—Yes.

Were you at Hornby school?—Yes, I was.

When you were a scholar there, were you in the habit of visiting Hornby Castle?—Yes, I was.

How long were you at Hornby school?—About two years, but I cannot recollect the time exactly.

Did you see much of Mr. Marsden, after he left school, and within three or four years of his death?—I saw Mr. Marsden after the year 1818, and repeatedly after the year 1824.

Where did you see him in 1818?—At Mr. Wright's house, at Heysham.

And where, in 1824?—Frequently at my own house, as well as elsewhere.

Did he spend a good deal of time at Heysham, in the summer?—Yes, he did.

You have exchanged visits with him?—Not exactly with him, but I frequently went to Mr. Wright's house, and saw Mr. Marsden there, and Mr. Marsden has frequently come to my house.

Did you ever walk with him?—Yes, I have.

When he was at Heysham, was he in the habit of attending your church?—Yes, he was.

Was he very regular in his attendance at church?—Yes, very regular.

Did he appear to you to be attentive to the service?—Particularly so.

Did you ever administer to him the Sacrament?—I did.

Once, or more than once?—I believe two or three times; I do not exactly know.

Did he appear to you to take any interest in the service of the church?—Very great.

You had chaunts in your service?—Yes.

Did he ever make any remark, as to those?—He objected to them, as he thought they were not well done, and thought they might be given up in future.

Did he ever object to any hymns?—He objected to one hymn, particularly; he said "it is too enthusiastic."

Did he ever speak to you about the building of the church?—Yes.

What did he say about it?—He told me that it was a very old building, and that we stood in great need of a new church; he also added, that at one time he had offered £100 towards it, and that Mr. Wright had offered £50 to rebuild one, and that the bishop of Bath and Wells (then bishop of Chester,) would aid the rebuilding, as far as his interest went with the society in London, as to enlarging and building churches.

What were his manners?—He was very polite indeed.

What appeared to be his disposition?—A very mild disposition.

What was your opinion as to his power of memory?—I cannot speak as to that.

From what you saw of him, was he, in your judgment, a man competent to the ordinary discharge of the affairs of life?—Yes, I think he was quite so.

If you had been asked, knowing him as you did, to witness his will, would you have done so, without hesitation?—I should have had none whatever.

Digitized by Google

Cross-examined by Sir J. SCARLETT.—Had you ever any conversation with him on matters of weightier moment than those you mention?—None other of weightier moment than those I mention.

Did you think him a man of inferior intellect?—Yes, I certainly did.

What made you think that?—Because he did not attend to his own affairs.

How did you know that?—Because I understood he referred every thing to his steward. I do not know, but I understood so.

Did it ever occur to you to converse with him upon any grave matters of business or businesses that required any intellect?—No, never.

You never had any conversation with him to try what was the extent of his intellect?—No: I once asked him for a subscription to our Sunday school, and he said that his residence was not at Heysham but at Hornby, and therefore he would give nothing. He said, however, that perhaps Wright would do so.

If it had been before you, you would have reminded him of it?—No; he mentioned that he had subscribed to the school at Hornby.

Was there any other conversation that you recollect, or were they all of that nature?—They were all of that sort. I never had any business transaction with him of any consequence.

You never discussed with him on any subject of morals, religion, or science?—No, never.

BARON GURNEY.—Were you in company with him and the family?—Yes.

With Mr. and Mrs. Wright and the family?—Yes, very often.

Did he take any part in the conversation then?—Yes, I have frequently conversed with him at Wright's house, and at my own.

Was the part that he took in the conversation such as to give you an impression that he was a man of any understanding or of no understanding?—The conversation led me to conclude that he was like the ordinary class of men, or a little below par, perhaps.

Mr Thomas Howitt, sworn. (Examined by Mr. WIGHTMAN.)—You are a surgeon at Lancaster?—I am.

Did you know the late Mr. Marsden?—I did.

How long before his death had you known him?—I believe about ten years.

Did you use to attend Mr. Wright's family when at Heysham?—I did.

Did you see Mr. Marsden there?—I did.

Were you at one time in pretty long attendance at Wright's house?—Yes, I had a very long attendance in consequence of the illness of one of Wright's sons.

How long were you in constant attendance there?—Twice a day for a month, and even sometimes after that.

Was Mr. Marsden at Heysham at that time?—Yes; before, and at the time.

Had you frequently opportunities of conversing with him?—Yes; certainly very frequently.

Did you attend Mr. Marsden personally yourself?—I did on one occasion.

Digitized by Google

Digitized by Google

Digitized by Google

What year was that in?—In 1824, I believe.

He had some attack, had he?—Yes, he had an attack of apoplexy.

How long did you attend him?—I attended him, until he was better; but I do not know what time it was.

Did you make any inquiries of him as to his complaint?—Yes, frequently of himself.

Did you receive answers from him?—Yes.

Was there any thing particular in the mode of his giving his answers, or was it like any other person?—They were like those answers that any other person might have given.

Did you see him after that at Hornby Castle?—I did.

Did you attend him professionally?—No, I only called to see him there.

After this attendance on him, did he ask you to bring him your bill?—He did.

Did you do so?—Yes.

What was the amount of it?—Three pounds and a few shillings.

Did he pay you himself?—Yes, he did so himself.

State the manner he paid you?—He took the money from his pocket, and tendered four notes. He said, "Mr. Howitt, your bill is within a few shillings of that amount; there is £4 for you."

And there were £4, were there?—Yes.

By Sir James Scarlett.—When was that?—In 1824.

By Mr. Wightman.—Have you ever seen him in company with Wright?—I have.

What was Wright's demeanour towards him when you saw them together?—The same as it was to any other person.

From what you saw of Mr. Marsden, do you think he was capable of making a will?—Indeed, I do.

Have you any doubt of his competency to make a will?—None.

Would you yourself have felt the least hesitation as to being a witness to his will?—None whatever.

Cross-examined by Mr. Cresswell.—How long have you attended on Mr. Wright's family?—I do not know the number of years, but it was for many years.

Has he a large family?—Yes he has.

How many children?—Seven children.

Did he pass a great deal of time at Heysham?—Always, now.

But when Mr. Marsden was alive?—They used to reside there in the summer.

Was Mr. Marsden always with them there?—I do not know, but as far as I recolloct he was.

Did you ever transact any business with Mr. Marsden, or talk to him on any matter of business except that matter of your own?—No, never.

You talked to him about common things, the state of the weather, and such like?—Yes, just so.

Did he not appear to you to be a man of inferior iutellect?—Certainly.

That was the impression made on your mind by the conversations you had with him such as they were?—Yes.

You were satisfied he was a man of inferior intellect?—Yes, certainly.

Was he alone when you took the bill to him?—Yes, to the best of my recollection; I think he was.

Are you sure of that?—I am not sure, but I know he came to me by himself.

Digitized by Google

That was at Heysham?—Yes.

If you had been desired, as a medical man, to ascertain the competency and strength of his mind, should you not have drawn him into other matters of conversation than merely the weather, and so on?—I cannot say I should.

And you form your opinion by that conversation, as well as conversations of another nature?—Yes.

By the ATTORNEY-GENERAL.—How many times did you converse with him?—Very frequently for an hour or two at a time.

I presume you did not talk to him about the weather?—Certainly not.

Did your conversation embrace various topics?—Yes.

Upon the weather, the news of the day, the politics of the day, and so on?—(No answer.)

SIR J. SCARLETT.—(to counsel.) Do not tell him what he talked about.

ATTORNEY-GENERAL.—I was asking him what it was.

Did you talk with him enough to form a competent opinion of his understanding?—I think I did.

And is your judgment still, notwithstanding my friend's cross-examination, that he was competent to make a will?—I have no doubt of it.

John William Lushington, Esq. sworn. (Examined by the ATTORNEY-GENERAL.)

You are the brother of Col. Lushington?—I am.

I believe you have been a magistrate for the county of Kent?—Yes, for thirty years.

Did you know the late Mr. Marsden?—I did.

When did your acquaintance first commence with him?—In the month of August, 1795.

Down to what time did it continue?—I knew him to the time of his death.

Was he a friend of yours?—Yes he was.

Was your acquaintance with him ever interrupted down to the time of his death?—Never.

When did you last see him so as to speak to him?—In the year 1816.

In the year 1795, how long did you stay with him; or rather first, let me ask you, were you in the house resident with him at all?—Entirely for three months.

At Hornby Castle?—Yes.

When did you visit him again?—In the year 1799.

How long did you remain with him then?—About five, six, or seven weeks.

When again?—In 1800.

How long were you again with him?—Perhaps four or five days.

Were you there in 1801?—I was.

How long then?—About the same time.

In 1802?—About two, three, or four days.

In 1805?—Yes I was with him then also.

How long did you visit him then?—About a week.

In 1807?—I was there for a few days.

Did you see him in 1811?—Yes, I was there a few days then.

In 1814?—I was then there about a week.

In 1816?—I was there between a fortnight and three weeks.

That was the last time you paid him a visit, I believe?—That was the last time I ever saw him at Hornby Castle.

Digitized by Google

Digitized by Google

Digitized by Google

How long did you stay then ?—Two or three weeks.

Have you any property in the North of England ?—Yes, I have.

GURNEY, B.—You married a lady of Kirkby Lonsdale ?—No, my lord, I married a Miss Wilson of Kendal.

By the ATTORNEY-GENERAL.—During those different occasions had you frequent opportunities of seeing Mr. Marsden ?—I had.

Did you breakfast, dine, and sup with him ?—Yes, I breakfasted, dined, and drank tea with him.

Have you had conversation with him ?—Yes.

Do you remember in 1795 whether Miss Tatham was a member of the family ?—I do not recollect whether it was in 1795 or 1799, or both; but I met her there as a member of the family.

You recollect her then on two of your visits or more ?—Two or more.

Did Mr. Marsden go out much ?—Not very often.

Did he receive much company at home ?—A good deal during the time I was there.

Do you recollect whether he had any imperfection in his sight; was he near-sighted ?—Very near-sighted, indeed.

Was his appearance such as to indicate it ?—Yes, so as to denote it; the moment you looked at him you perceived it.

What were his manners as a gentleman ?—His manners were particularly polite.

Was he rather of the old school ?—Yes, he was.

What was his temper ?—Very good and placid, certainly.

What was his character for kindness or humanity ?—I never heard a dissentient opinion as to his kindness or benevolence.

What sort of memory had he ?—It was peculiarly retentive.

Have you reason to notice that on various occasions ?—I have on several occasions.

What sort of education did he appear to have got ?—I thought it was a very neglected one.

Was he able to converse on the general topics of the day ?—Yes, without any difficulty as far as I was with him.

Did you ever discuss any specific matter with him, or any abstract question of morals or theology ?—No, never.

But the public events ?—Yes, such as circumstances that occured in the newspapers, and other matters of general conversation.

Was he fond of pedigrees ?—Yes

And genealogy ?—Yes.

Did he appear to have read the peerage book at all ?—Yes, with great attention.

Did you recollect any instances of his tracing any genealogies in the peerage ?—I recollect a single instance but I do not recollect the parties that brought it under my notice; I recollect his skill in genealogy and his recollection of intermarriages, and so on, of some noble families.

You did not take the same interest in it that he did ?—Certainly not.

What was his behaviour to his guests ?—He was particularly polite and attentive to all his guests.

Was he social ?—Yes.

Did he take a glass of wine after dinner ?—Yes, he did, but not to excess.

What were his habits as to industry, or attention to business ?—I should conceive he was a man of very indolent disposition altogether.

Digitized by Google

Did you ever walk with him about his grounds?—I did.

Do you remember on any occasion when you were there that improvements were going on?—Yes, I do.

[Here Mr. Baron Bolland entered the court, and took his seat by the side of the judge; this occasioned a short interruption of the proceedings.]

I was asking about the improvements that were going on; did he converse on the subject of those improvements?—He pointed out such and such improvements were made, and stated that others were in contemplation.

Did he read the newspapers at all?—Yes, regularly.

Did you ever hear him read paragraphs from the newspapers?—Occasionally, but not very frequently.

Have you heard him converse on the contents of the newspapers?—I have heard him make observations on the paragraphs that he occasionally read?—Did he use to play on the violin?—Yes, he did.

Did you formerly play on the violin also?—Yes.

Did he play in your presence?—Yes, he did.

Did you ever play with him?—I did.

Were you staying there at the same time when your brother, Colonel Lushington, was there?—Once.

Do you remember seeing Mr. Baron Bolland there?—I introduced Mr Baron Bolland.

Was Mr. Marsden able to play on the violin?—Yes, he was.

Did he play from notes?—Yes.

Did you ever play any duets with him?—I did.

Did you ever hear him play, or attempt to play, duets with your brother?—With both of us.

Was he able to play them on the violin?—He was.

What pieces have you played with him?—I played, with the exception of the ninth, all Schwindle's duets for two violins.

Any thing else?—Two or three of Louis Borghi's duets.

Any thing else?—I played nearly the whole of Campbell's Nottorno's. for two violins and the violoncello, but we played them with two violins.

Any of Correlli's music?—Yes, some of the more easy ones; the violin parts we played.

Was he able to perform in those different pieces of music you describe?—He was; I have frequently played them with him.

Could he read the notes?—He could.

And have you no doubt of it?—Not the least in the world.

Did he play any thing without the notes?—Frequently, but more frequently with them.

What have you heard him play without the notes?—Many tunes—"How Sweet in the Woodlands!"—"Ah! whither my Love."

Did you ever hear him play "Dainty Davie?"—I did.

Is that a song or a tune, or what?—I think it is a strathspey.

About what time was it you heard him play "Dainty Davie;" was it then, or later in life?—I do not think I ever heard him play it before 1805. Perhaps I never heard him play before 1811.

Did he use spectacles at any time?—Always when he was playing by the musical notes.

Was he able to play at whist to your knowledge?—I do not recollect.

During the time you were there were there visiters staying in the house?—I should answer further to your former question by saying that he always

Digitized by Google

Digitized by Google

Digitized by Google

used spectacles when he played by printed or manuscript notes, but when he played from scores, I think he played sometimes with spectacles and sometimes without them.

Did he receive visiters when you were there at dinner; I mean those who came to dine and afterwards went away?—Yes.

Had he guests or visiters who came and staid a day or two?—Yes, for many days.

Have you met other gentlemen of the neighbourhood there?—I have.

Do you recollect some of their names?—I recollect meeting Messrs. Worswick there; Mr. Barrow, the counsel, once; Mr. Gibson; Mr. Clarkson, of Heysham; and Mr. Lister.

By GURNEY, B.—What Mr. Clarkson was that?—Thomas, and Townley Clarkson; both brothers.

By the ATTORNEY-GENERAL.—I beg to ask you, was Mr. Marsden treated by you as being the master and owner of Hornby Castle?—Yes, decidedly so.

In what manner was he treated by other persons who came there?—In the same manner as far as I saw.

Were you able to form an opinion of his capacity and intellect?—I had frequent opportunities of doing so.

What should you say about him in that respect?—I should say he was decidedly inferior in point of talent to the majority of gentlemen I was in the habit of associating with.

In your opinion was he competent to make a will?—Certainly.

Had you any doubt of it?—Not the least in the world.

Did he receive his guests himself?—Always.

Was his demeanour towards them that of a gentleman as master of his own house?—Quite so.

Did you on any occassion ever see him treated with the slightest disrespect by any?—No I did not.

Did you ever see Mr. Marsden and Mr. Wright together?—Frequently.

In what manner did Wright behave to him?—As one gentleman would to another.

Was Mr. Wright a very polite man?—I should not characterize his manners as such.

Were his manners courteous or harsh?—To myself they were always perfectly civil and polite.

Was he a courteous man?—He was rather rough and stern.

Was he austere?—I think to his inferiors his manners were so.

Have you ever heard Mr. Marsden give directions to his servants?—Yes to some of them I have.

Have you ever heard Mr. Marsden and Mr. Wright converse together?—Yes.

Have you heard Mr. Wright consult with Mr. Marsden, or ask him any thing?—No.

You have seen Mr. Lister there, have you not?—Yes, frequently.

Do you remember the old gentleman, the father of the present Mr. Lister Marsden?—Yes.

Did you see him there?—Yes.

And you also saw the son there?—Frequently the son.

In what manner did Mr. Marsden conduct himself to them?—I do not

Digitized by Google

distinctly recollect his manners, never having met the old gentleman but once or twice; but to the young Mr. Lister (now Mr. Lister Marsden), his manner was that of a very affectionate friend.

Had you ever any conversation with him on the subject of Wright's management of his estate?—I have.

What has he said on that subject?—He expressed more than once to me perfect satisfaction with Wright's management, and spoke of him in terms of great kindness.

Do you believe he understood his situation in society as being the owner of the property he enjoyed?—I do.

Do you think he was capable of making a selection of the person to whom he would leave his property at his death?—I have no doubt of it.

Would you have had the least hesitation at all in attesting his will?—Not for a moment.

Cross-examined by Sir J. SCARLETT.—What were the circumstances that led you to believe that Marsden was decidedly inferior to the majority of other gentlemen you associated with?—I found they had more information.

You do not confound information with talent, do you?—Information is the fruit of it, I apprehend. The man that has no talent cannot acquire information. I mean to state that the majority of those gentlemen with whom I associated had more information than Marsden, which I attributed to their having talents superior to his.

Your judgment of his talent or its degree is precisely measured by his information?—Yes.

Then if it be not so, I ask you again what was it that made him inferior in talent to your other companions?—I did not think his mind so strong as the majority of those whom I knew.

Do you mean a small majority or a great one?—A considerable majority; I had a large acquaintance.

And you thought his mind not so strong as the majority of them?—I viewed his mind as being different, and not so strong.

You did not think him a weak man?—I should not say he was a weak man, unless you define what is meant by weak.

I should presume we need not differ on the meaning of it; I should not think it necessary to define it to a gentleman of education?—I thought him rather weak than otherwise.

Is that your answer, "Rather weak than otherwise?"—Yes.

Did you think him a weak man?—I thought him a weak man.

And you thought Mr. Wright a rough man?—I did.

May I beg to know what was the reason of your cultivating their society; the one being a rough man in his manners, and the other a weak man in point of judgment?—I know of no reason, except that I was first introduced by Mr. Townley Clarkson; I found my visits agreeable, and I repeated them.

Did your visits depend upon the description of the two gentlemen, the inmates of the mansion, Wright and Marsden?—I have already stated that Wright's manners to me were civil, but he was rather rough to some; I found him very much so.

Was Wright a man of much information?—I did not think he had cultivated much acquired information, but he was a man of strong mind.

Had he any literature?—I think not.

Did Marsden appear to have any literature?—No, I think not.

Digitized by Google

Digitized by Google

Digitized by Google

You were educated at the university?—Yes.

For orders?—I was not educated for orders, but I took deacon's orders at the solicitation of my father.

You seem to think that memory and judgment are similar in some persons?—Yes.

Was there anything so agreeable in the conversation of those two persons, as to make you visit so much at Hornby Castle. Was the source of that agreeable society at Hornby Castle, either the conversation of Mr. Wright or Mr. Marsden?—Not exclusively so.

Did you not go there for the purpose of sporting?—I went there, first of all, to be introduced to Mr. Marsden, and to get some grouse shooting.

Were not your visits more generally in that season?—No; in 1795, and 1799, they were. In 1801, 1802, and 1805, they were not, as there was no grouse shooting.

You were there with your brother, in 1805?—Yes.

Was there no sporting then?—Not that I recollect. I will not be positive as to 1805, but I am quite positive as to 1801, 1802, and 1816, also.

As to music, was Mr. Marsden a good timeist?—He played sufficiently in time; we could play the duets without any difficulty.

Did you keep good time together?—No; I do not mean to say that I was an accurate timeist. I played the second violin. I do not believe that an accurate knowledge of the time is absolutely necessary for playing well on an instrument. I know one who is a good player without that. It is not indispensable. A man may perform finely on an instrument without playing exactly in time; if you are playing in accompaniment with other instruments you must keep time, but if you are playing by yourself, it is not absolutely necessary.

The variation in the time makes a difference in the whole of a man's playing on an instrument—does it not?—Yes; but a variation in time is sometimes an improvement.

Do you mean in such tunes as "Alley Crocker." Have you played them partly slow and partly quick, you would quite mar it, would you not?—Yes; but I know that some tunes vary in their time; some are played in the time of *adagio* and some of *allegro*.

But that is not to give you any time to flourish as you please. It is quite new to me, to say that time is of no importance to music?—I did not say so; I said only that it was not indispensable.

You mean that he might play all the notes but not play in proper time?—No, I do not mean any such thing; you may vary the time as you please. If any man be playing an air on a violin he may vary the time as he fancies.

The whole tune, or only particular passages?—Particular passages.

That is all I have stated, and you think a person may still be a great master if he do so?—Yes.

Then I should conceive that for one person to play in one time, and another in another, would be complete nonsense; tune and time go together to make an air, do not they?—Yes.

But would you say that if you were to sing "God save the King" you might begin at the end of it, because you would play all the notes?—I do not understand you.

Suppose you took the first part and played it in quick time, and the second part were played slow, would it not make a variation in the air?—Yes, no doubt of it.

Then I ask you whether to play the same tune or the same air, you must not

Digitized by Google

have the modified time?—I do not mean to say that a man can play well who is ignorant of time altogether, but I mean to say that it is not absolutely necessary to be a good timeist to play well on the violin.

Then you think you might play any piece of music all out of time?—To be sure you may.

Would you not make nonsense of it?—I cannot tell 'till I hear it played.

You played the second part, and you followed Marsden in his tune did you?—I played along with him.

Therefore you watched his time?—As nearly as I could, but I do not mean to say I was an accurate timeist.

Who listened to your music?—Mostly ourselves.

Were there not ladies there?—There were not a great many ladies.

Were there not Mrs. Wright and her daughters?—I recollect the daughters, but they were at school most of the time.

When was it you played, was it in the evening?—It was sometimes in the morning.

How many hours at a time did you play?—Perhaps half an hour, or three quarters of a hour.

And you went from duet to duet?—I do not recollect exactly, but I believe we went in succession; we took single pieces.

Are Schwindell's duets easy?—For the most part they are.

Are Louis Borghi's easy?—Not above two or three, there are only six of them altogether.

And you played the easy parts of Correlli's trios?—Some part of them.

I thought you said you played the whole of Correlli's—No, I have hardly known in my experience half a dozen violinists that could play them.

That was what astonished me at your evidence before, did you not say that you played parts of several of Correlli's trios?—I did, and I say so now.

Did you not say that Correlli's were very difficult?—I said that some of them were, and some were otherwise.

Did you play a difficult part with him?—No, I could not do it myself, and I could do a little more than him.

I had understood that you were much practised in music?—Who told you so?

It was your brother Henry; he is not much of a proficient?—He said wrong then.

The Attorney-General.—He took a brotherly view of the subject.

As to your brother Henry, was he a player?—He could not distinguish "Malbrook" from "Queen Mary's Lamentations."

Consequently he thought you a great performer. You seemed to have lived a great deal with Marsden; did you take much delight in his conversation?—I liked visiting there, otherwise I should not have staid.

Was it his conversation that amused you?—In some matters.

He had no information; you thought him rather a weak man, withoutinformation, and yet he was a person in whom you could take delight?—I was sometimes amused with him.

What sort of amusement was it; did you laugh at him a little?—Never.

What was the sort of amusement you had when he gave you no information, he was of course very moral, was he?—I never heard him otherwise than moral, but we never discoursed on that subject.

Gurney, B.—(to counsel)—You sometimes change this gentleman's answers upon him, that it is impossible for him to know what the real ques-

Digitized by Google

Digitized by Google

Digitized by Google

tion is; you have changed the terms of the answer he has made in many instances.

Sir J. SCARLETT.—I will correct it, my lord, if your lordship tell me so.

Had you any conversation upon morals with him?—Not specially on morals. You have shaped your question differently, but I cannot give you another answer.

Did you talk upon the subject of the Decalogue?—No.

Do you know the difference between moral and natural philosophy?—I perhaps may.

Had you any discussion with him upon morals?—No.

Nor natural philosophy?—Not that I recollect.

Nor literature?—I do not recollect that I had.

Did you ever try him on any of those subjects?—No; I have no recollection that I ever did.

Nor on politics?—He used to talk occasionally upon the politics of the day.

What do you mean by "politics of the day"?—The facts which were stated in the newspaper reports of the House of Commons, and he appeared to have some knowledge of those facts.

When was the time you stayed three months?—In my first visit, in 1795.

That was in the grouse shooting season?—Yes.

Was any House of Commons sitting then?—I do not recollect, probably not.

Perhaps you talked of sporting and fishing?—Occasionally.

It was from conversations of that nature that you settled in your own mind that he was a weak man?—No, I do not say that the general impression on my mind was that he was a man not of strong mind.

Was it from your conversation with him that you formed that impression? Not on sporting particularly, but of all the conversation together.

You say you heard him giving orders to the servants?—I have.

What was that order?—At this distance of time I cannot recollect. I have heard him give orders to the game-keeper or huntsman; I heard him desire them to prepare some salmon roe for bait in fishing; it was for some gentlemen that were there.

Have you heard him giving any other direction to servants; do you recollect?—Yes, I have heard him desire them to report what was the state of the weather and water, and what bait would be best to fish with.

Is there any thing else present to your memory?—No; I was not in the habit of attending to the orders he gave his servants; I had no view in rivetting them in my memory.

Did he appear to you to have control of the house?—Mrs. Wright was the housekeeper, and managed those matters.

Had he the control of the house?—He appeared to have it.

Always?—Yes.

Then in what capacity did Wright appear?—He was there as his steward.

As his companion too?—Yes, constantly.

Was Wright there all the time you were there;—I think almost always.

Do you recollect any instance of his absence for a day, and of his not dining at the table when you were there?—Once or twice, from illness; you mean Mr. Wright?

Yes?—Yes from illness, he was absent a day or two.

Digitized by Google

You had conversation with Marsden as to the extent of his property?—Do you mean in value?

Yes, or the number of acres of the different farms he had?—No, I never heard him specify the different farms, but he has spoken of them generally; I understood Hornby Castle was surrounded by 500 or 600 acres, but whether I heard that from Wright or him, I cannot say.

You were there nearly three months some times?—Yes.

You must have known whether his tenants ever came to speak to him?—No, I never saw a tenant speak to him.

Did you ever happen to know of any person coming to speak to him on business when you were there?—No, I do not recollect.

Re-examined by the ATTORNEY-GENERAL.—I had asked you something about his character and morality, and you said he was kind and hospitable?—Yes.

You had a respect for his character?—I had every reason to have, as I experienced the greatest kindness in his hospitality, and I could not but be very grateful.

Are you in the habit of measureing out your feelings of kindness according to the intellect of the persons you associate with?—Certainly not, I know some very clever persons I hold in very great contempt. He was not only esteemed by me, but he created esteem in many others.

Has the keeping time any thing to do with the tone of an instrument?—Nothing at all.

Can a person be a very accurate performer without much knowledge of time?—Decidedly.

Time is essential to be an accurate performer?—To play in concert.

And to be an accurate performer?—No doubt of it.

But for producing a certain effect in execution and tone, has time much to do with the business?—It has something to do with it, but it is not indispensable.

On what terms did Marsden and Wright appear to live with each other?—So far as I saw, on terms of mutual confidence and esteem.

Did Wright appear to live with him as a servant or a friend?—He appeared rather to be living as a friend, I never saw him acting.

The Revd. John Howson, sworn. (Examined by Mr. TOMLINSON.)

Mr. Howson, are you the second master of Giggleswick school?—Yes, I am.

Were you formerly assistant to Mr. Procter?—I was.

At his school?—At his academy.

That was first at Cantsfield?—Yes.

Was it afterwards removed to Hornby?—Yes, it was afterwards removed to Hornby.

Were you acquainted with the late Mr. Marsden?—I was.

When did you first become acquainted with him?—I think in the year 1805.

Where did you form your acquaintance with him?—I first became acquainted with him at Giggleswick.

Was he on a visit there?—He was on a visit to the late Mr. Lister at Belle Hill.

Did you continue to reside some years in the neighbourhood of Hornby Castle?—For full three years after that time I was at Hornby.

Did your acquaintance with Marsden continue during that time?—It did.

Had you during that time frequent opportunities of seeing him?—I had.

Digitized by Google

Digitized by Google

Digitized by Google

Have you met him in his walks ?—I have.

Did you visit him at the Castle ?—I did.

Then did you see him during that time very frequently during those three three years ?—Yes, very frequently.

Had you many opportunities of conversing with him ?—I had many.

Did your acquaintance cease after that time—or did you see Mr. Marsden since that time ?—Yes, since I left Hornby, but I think not more than twice.

When did you go from Hornby ?—I left Hornby in June, 1808.

What were his manners ?—Marsden's manners were extremely courteous and kind.

And his disposition ?—His disposition from my own experience and that of others, was very friendly.

Do you yourself play music ?—I did so at that time.

On the violin ?—Yes, on the violin.

Did Mr. Marsden play ?—Yes, frequently he did.

Did he play from notes ?—When I played with him he played from printed music.

Have you at various times played with him ?—Not more than two or three times.

Are you a self taught player, or had you received instructions ?—I was entirely self taught.

Did he ever correct you when you played together ?—Yes, he pointed out inaccuracies in my playing.

Was he correct in those remarks he made ?—I thought for the most part that he was correct.

Did he also play without notes ?—I am not aware of that; I never was present when he played without notes; I never saw him play without notes.

Perhaps you never heard him play "Dainty Davie ?"—I cannot say that I ever did here him play "Dainty Davie."

What kind of a player did you consider him to be ?—I thought Mr. Marsden's tones were very good; but my opinion was not very much to be relied on as I was not very accurate myself.

During the time you were with him, had you opportunities of forming your judgment of his understanding ?—I had, certaily.

Do you believe him to have been a person capable of conducting the ordinary affairs of life ?—I should say so.

In directing and managing his own affairs ?—Yes, I should think so.

Do you believe him to have been capable of making a will ?—Certainly I should think so.

Had you heard any thing said or done by him to give you reason to doubt his capacity for making a will ?—None whatever.

And would you have objected to have attested any will made by him ?—I should not.

Cross-examined by Mr. STARKIE.—I think you say Mr. Howson that Mr. Marsden was a courteous, polite man; was he not very timid ?—Yes, he was rather timid, but I do not remember any particular instance of it.

Was not that the impression made on your mind, that he was rather of a timid disposition ?—The generrl impression of my mind would certainly rather lead to that.

What should you say as to the extent of his capacity—was not his mind below the ordinary average ?—Perhaps his mind, and partly his attainments,

Digitized by Google

were so, but I could not pretend to measure them; I never heard him say any thing that could be reckoned so foolish as to be contrary to good taste or good sense.

Was not his mind below the ordinary standard?—Perhaps below the average of intellect.

I believe that was what you stated before?—Yes, when I was examined at Lancaster.

You then stated to that effect?—Yes, undoubtedly I must have said that, as that was my opinion.

What reason have you for coming to that conclusion, or saying that his mind was below the ordinary average of intellect, was it because you never heard him say any thing foolish?—It was from the general impression of my mind throughout the general conversation with him, and hearing him converse with others.

I want to know what there was in any of those conversations which led you to the conclusion that his mind was below the ordinary standard?—I never heard him say any thing that was abhorrent to good sense or contrary to good taste, or any thing that could be called ridiculous.

Then if that were the case, why should you say that his mind was below the ordinary standard?—I do not think the propositions are contrary.

You say that his mind was below the ordinary standard?—Yes, I think it was.

Then what was the reason that induced you to come to that conclusion?—From the general impression that arose from conversations I had with him.

What was there in those conversations that could have that effect; you say there was nothing particularly foolish in his conversation and behaviour, what was it that led you to think so as you have stated?—Perhaps he was a little more common-place in his conversations than ordinary, and showed no great judgment.

You said that he was capable of managing his own affairs?—Yes, as any gentleman would do, under direction.

I did not understand you to say so with any limitation?—With the ordinary assistance which a gentleman in that situation would have.

What do you say now upon that subject?—My opportunities with respect to matters of business were not at all such as to make me competent to answer that question; if you refer it to matters of business, I did not know the nature of his business.

If you mean to explain or qualify your opinion in any way, you may do so; do you mean to say that he managed his own affairs?—I think I heard the word "direct" in one of your former questions.

Is that your opinion, that he was capable of directing his own affairs?—Yes.

Have you known him give directions for the management of those affairs, or any affairs whatever?—I do not know exactly what you mean by affairs. I have heard him give ordinary orders to the servants that attended him.

I should like to know what those orders were, and on what occasion it was that you heard those orders given?—I frequently dined with him at his own house, and also at other places, and I have heard him give orders to his servant, such orders as other gentlemen would give.

GURNEY, B.—He is speaking at a distance of at least 26 years. He says he cannot recollect any particular instances, and how should he?

Digitized by Google

Digitized by Google

Digitized by Google

Mr. STARKIE.—Did you ever hear him give any directions to his servants, beyond such directions as desiring them to bring him more wine?—I never had an opportunity of hearing such directions. I merely met him at table—at dinner. I never heard any other directions than those that are generally necessary at table.

You therefore think he was capable of directing his own affairs, and in saying so, you form your judgment from such directions as you heard him give at table?—From all the conversations I heard.

You never heard him give any directions but at table?—I had no other opportunity.

What was the instrument you played upon?—The violin.

Was Marsden your teacher, or did you teach yourself?—I taught myself a little.

You did not know as much of music as Marsden did?—I certainly thought myself inferior.

Did you ever get as far in your progress as to play "Dainty Davie?"—With respect to that tune I can play it very well. I have long ceased to be a fidler.

Re-examined by the ATTORNEY-GENERAL.—Do you register conversations you have with people of all descriptions, and all the orders you hear given to servants, so as to recollect them for twenty-six years?—I should think not.

You form your opinion of persons from associating with them?—Yes, shat is the ground upon which I form my judgment of Marsden.

Mr. Baron Bolland, sworn. (Examined by the ATTORNEY-GENERAL.)

You are one of the barons of the court of exchequer?—Yes.

Did you ever pass any time at Hornby Castle?—I did in the year 1799.

How many days?—I believe I was there thirty-three days in all.

Were you ever there on any other occasion?—Never.

Who introduced you?—Mr. Lushington, and Mr. Townley Clarkson.

During that time, had you any opportunity of seeing Mr. Marsden?—I dined with him every day, and was there a portion of the day, particularly the weather were wet.

Have you the means of recollecting or knowing that, upon some days, you did not go out, but remained part of the day at home?—Oh, yes, certainly—I should say several.

Did you always breakfast together, the whole family?—Yes.

And dine together?—Yes, and we dined together.

Did Marsden entertain persons while you were there, who came and stopped a day or two?—Yes, certainly.

Were there others that came to dine there, and went away in the evening?—Yes, several gentlemen from Lancaster.

Do you recollect on one occasion, a considerable number of gentlemen dining there?—I do; the party was sixteen or seventeen.

Do you remember the Messrs. Worswick there?—Yes.

Do you know Baldwin, the solicitor?—Yes.

Was he there?—Yes.

Have you had opportunities of conversing with Marsden?—I have.

Has he ever talked to you about any improvements he made, or intended to make?—Yes, there was some little doing which I saw, they were

Digitized by Google

planting; I asked whether they were making some improvements, and he said they were.

At table did he take part in the conversation?—Yes.

What were his manners?—His manners were those of a gentleman, extremely polite and courteous.

Was he hospitable?—Very.

Attentive to his guests, or otherwise?—Very attentive.

Did you ever hear him, or see him play on the violin?—No, I never was in the music room; once I heard playing there, but whether good or bad, I am not able to say.

Do you take any interest in music?—No, I do not.

Not in the least?—Not in the least.

Do you know of his going out to dinner, while you were there?—I cannot charge my recollection as to that.

Have you any recollection yourself of dining with Baldwin?—Yes, I have.

Did Marsden dine there?—That I do not remember; I remember dining with Mr. Baldwin; it was my birth-day; I believe I was at Heysham at that time, and came with Clarkson and returned.

During your stay there, had you frequent opportunities of conversing with Marsden?—I had an opportunity of course during the thirty-three days I remained, taking out of that time those days that I was out visiting, (which was not very often), or in fishing in the river Wenning; there were many days that were wet, and then I remained at home.

But when you remained at home, did you converse with Marsden?—I did.

Did he appear to be a well-educated man?—No, he did not.

Did he appear to be a man of strong mind, or in any way gifted?—No, I should say certainly not.

Did he appear to you like a man competent to make a will?—I have no doubt of it.

Should you at all have hesitated to attest the execution of his will?—Not for a moment.

Should you have had the least idea of a doubt?—No, I never had such a doubt across my mind.

Did you see much of Mr. Wright?—Yes, I think he was there every day I was there, except, perhaps, occasionally, when business called him away, and he did not dine with us; but I do not recollect that that happened very often.

Do you think Mr. Wright's manners were abrupt?—Do you mean to Marsden?

No?—I should say, as Mr. Lushington said, that Wright was abrupt in his manners.

Did you ever see Marsden and Wright together?—Yes.

Did you ever see any difference in the conduct of Marsden in the presence of Wright?—No.

In Marsden, whether Wright were there or not?—No.

In what way did Wright behave to him?—When I have seen them together he always behaved respectfully, as one gentleman would to another.

Did you ever hear Marsden speak about Wright in his absence?—The impression on my mind is that he made observations to me that expressed his gratitude to Wright for buying the property and managing it.

Did he appear to be sensible of that?—Yes he did.

Digitized by Google

Digitized by Google

Digitized by Google

Did you, after you left Hornby Castle, address that letter to him—look at it (handing a letter) ?—Yes.

Did you send him a copy of a volume of poems you had written, as a prize poem ?—I did.

Would you have sent him that, if he were incapable of knowing and appreciating it ?—I certainly should not.

Did he conduct the management of the house; did he appear as master of the family ?—Yes, but the management of the house devolved upon Mr. and Mrs. Wright. I do not know that I heard him interfere with that, in their presence.

During the whole time you were there, did you observe any want of propriety in Marsden's conduct, in any way whatever ?—I never did.

Was there a Miss Tatham staying in the family at that time, in 1799 ?—Yes, I think there was.

Was she there as a member of the family ?—I could remember her no where but there. I remember her well; but how long she was there when I was there, I do not know.

Do you recollect whether Marsden ever shewed any particular affection towards Mr. Lister and his family ?—The impression on my mind, from Marsden's conversation about Anthony Lister was, that he was particularly attached to him. I remember, on the 11th of August, he talked during the whole of the morning of Anthony coming over that evening to dine, and I remember his saying, "Now Anthony is cleaning his gun," which made me think that Anthony Lister was a particular favourite, or great friend of his; he was then seventeen or eighteen.

Did he receive him with much affection ?—Yes, he did.

Did he appear to be much attached ?—Yes.

Did Marsden appear to you to understand the relation in society in which he stood ?—Yes, certainly.

Did Marsden appear to you to be capable of selecting the persons to inherit his property afterwards ?—Yes, as I said before, I thought he was capable of making a will.

Cross-examined by Sir JAMES SCARLETT.—Now, Mr. Baron Bolland, you will forgive me for putting a few questions to you; you say you sent Marsden a prize poem ?—Yes.

You were not at the bar then ?—No.

You had taken your degree at Cambridge ?—Yes.

Was it from any conversation you had with him that you supposed him capable of understanding that poem ?—No; the poem was what I had written at Cambridge, and he knew nothing about it, and I sent it to him a year afterwards.

Was there any conversation you ever had with him that led you to suppose he could understand that poem ?—No, there was not; but there was nothing that led me to understand that he could not.

That was what was called your prize poem ?—Yes.

What was the subject ?—Paul at Athens.

By the ATTORNEY-GENERAL.—You were successful more than once ?—Yes.

By Sir JAMES SCARLETT.—Had you any conversation with him upon any subject of science at all ?—No, not that I am aware of; it was generally that sort of conversation that would have passed between one gentleman on a visit to another.

Digitized by Google

You were a long time there?—Thirty-three days I was there. I was staying at Heysham, and then came back.

How long were you there in all?—Thirty-three days.

Do you take out the time of your visit at Heysham?—I passed thirty-three days at Hornby, although not consecutively.

Those thirty-three days would give you opportunities of conversing with him more than merely upon the common topics of conversation?—Yes; but I have no recollection of any other than common conversation.

Were no subjects of literature nor of science introduced?—No.

Was there any conversation that tried the depth of his intellect?—No; I never conversed with him with that view. I only conversed upon local subjects of the neighbourhood, and the politics of the day; further than that, I did not at all know his mind.

Re-examined by the ATTORNEY-GENERAL.—I do not ask you as a judge, but as a gentleman—Do you think that any knowledge of science, morals, literature, or music, would be necessary to have enabled you to form that judgment as to his being competent to make a will?—No, I think not. I myself should not have known "God save the King," nor any other tune.

By Sir JAMES SCARLETT, (through his Lordship.)—I wish to ask whether you think that a conversation upon the subject of science, morals, or literature, would have enabled you to judge better of the power of his intellect?—Yes, certainly.

By GURNEY, B.—From the conversations you had with Marsden, and from his manner and deportment, you formed the judgment you have stated?—Yes.

Mr. William Batty sworn. Examined by Mr. MARTIN.—Mr. Batty, you are a surgeon at Kirkby Lonsdale, are you not?—Yes.

Did you succeed Mr. Bickersteth?—I did.

Had he been the medical attendant on Mr. Marsden?—He had.

After he retired did you become so?—I did.

When was that?—In June, 1808.

Did you continue to attend him up to his death?—Yes.

During all that time that you attended at Hornby Castle, did you see him frequently.—Yes.

Both professionally and as a friend?—Yes, I did.

Did you receive answers to any questions you put to him yourself; when you put questions to him, did you receive answers from him?—Always.

Did he conduct himself as any other patient would do on those occasions?—Yes.

Had you bled him?—Repeatedly, and cupped him too.

Do you recollect, on one occasion, receiving any payment from him—Yes.

What was it?—I was attending a patient in the village of Hornby; Mr. Marsden heard I had been there, and sent for me to come up to the Castle. I went to see him; he was not well, and I required him to he bled, which was done. On my getting up to go away, he asked me to stay dinner, but I declined, and I was leaving the room, when he begged me to stay. He turned towards the window and took some money out of his waistcoat pocket. He said "there Mr. Batty, there is a guinea; that is a physician's fee." There was part of it in silver.

Did you find the silver correct?—Yes; there was half a guinea in gold, and ten shillings and sixpence in silver.

Digitized by Google

Digitized by Google

Digitized by Google

Had you been also on one occasion attending Mr. Wright?—I had.

Was he unwell for a considerable period?—Yes, for several months.

During that time did you see Mr. Marsden?—Very frequently.

Did he speak to you then of Mr. Wright?—He did.

Did he appear anxious for his recovery?—Very much so and invariably he expressed anxiety for his recovery.

Did he otherwise speak of him than as to his illness?—Yes.

In what terms did he speak of him?—In very high terms.

Have you heard him speak of his general affairs?—No. I cannot say I have.

Have you ever heard him speak of improvements that were going on?—Yes I heard him speak of intended improvements at the castle; he asked me on one occasion whether I had ever seen the plans.

Did he shew you the plans?—He desired Mr. Wright to shew me them.

From the opportunites you had of judging of him, did you think him competent to manage the ordinary affairs of life?—I certainly should think so.

Did you think him competent to make a will?—I did.

Would you have attested a will, if called on so to do, made by him?—I certainly should.

Have you ever seen him write?—I have.

Do you recollect on one occasion coming into the room, when an observation was made as to his writing?—Yes, I do. One morning, on my way to Lancaster, I called at Hornby Castle. In passing the front hall, Marsden saw me entering at the front door, from his window; upon which he came into the hall and said, "I am glad to see you, Mr. Batty, I was just writng a note to you." I went with him into his room, and he gave me the note into my hand; I perceived the ink was wet on the sheet of paper.

Look at that, (handing a paper to the witness).

Sir James Scarlett.—Is that the note alluded to.

Mr. Martin.—No.

Whose hand-writing is that letter?—It is the late Mr. Bickersteth's hand-writing.

By Gurney. B.—He is dead is he not?—Yes.

Cross-examined by Mr. Armstrong.—Where were the plans you were to look at?—In Wright's room.

Where was Marsden's room?—Facing the south, nigh the door.

Now how do you describe Marsden's intellect, was he a weak man?—I certainly did consider Mr. Marsden a man of weak intellect; at all events, certainly not of strong understanding.

What subject did you talk to him about?—Respecting his illness and the ordinary topics of the day.

Nothing else?—No, nothing else, that I am aware of.

And from that you are of opinion that he was a person of weak intellect?—Yes, certainly.

You say he gave you this guinea fee, and that it consisted of half-a-guinea in gold, and the rest in silver?—Yes.

Was it counted by any one?—He counted it himself.

Are you able to say that there was half a crown amongst the silver?—I cannot recollect one way or other as to that.

Have you often received a fee in that way before?—Not so often as I could wish. I have received them very often in that way.

Paid in that manner?—Not for that particular act.

Digitized by Google

That was for phlebotomy.—Yes.

Have you often received your fee in gold and silver—I mean not for a particular operation?—Yes, I have often received it in gold and silver.

On one occasion you saw Mr. Marsden write, as I understand you?—At least I saw him with the pen in his hand.

But you did not see him writing?—No.

And the ink you say was wet?—Yes.

Was the note folded up?—No, it was not finished at that time. I took the paper in my hand, and folded it up, and read it on my way to Lancaster.

Was there any other writing on the table at that time?—I do not know that there was.

Was there any other paper on the table at the time?—I did not see any; I do not know that there was; I did not see any.

But the note, imperfect as it was, he gave to you?—Yes.

Re-examined by the ATTORNEY-GENERAL.—Do you recollect reading it?—Yes, certainly.

Did it contain any information?—It was to request me to come to Hornby Castle.

Can you form any judgment respecting him that day?—No, certainly not; it was merely an accident, my calling.

Was there any other person with him?—No, there was not.

The ATTORNEY GENERAL.—We now propose, my lord, to read Mr. Bickersteth's letter, and to call Mr. Tomlinson to prove what was done upon it, as to the election of a trustee. I do not know when your lordship means to adjourn—perhaps it would be convenient to know, in order to regulate our proceedings.

GURNEY, B.—I propose to adjourn in ten minutes.

The ATTORNEY-GENERAL.—Will your lordship hear a deposition now; or will you hear this letter read?

GURNEY, B.—We will hear the letter now, and take the depositions afterwards.

There was then produced, and read by the clerk, the following letter, signed H. Bickersteth, addressed to John Marsden, Esq. dated Kirkby Lonsdale, Wednesday morning.

DEAR SIR,—On mentioning to Mr. Dobson that you said you would have the goodness to come to Kirkby to-morrow to serve him, provided he thought there was any occasion for your coming.—As I find that his Opponent in this business is making all the Interest he can, Mr Dobson thinks it necessary to request the attendance of all his friends on the occasion I have sent you the Act of Parliament to let you see you are a Trustee. and by equalifying, you need have no fear of their troubling you on other business—You were appointed as Mr. Dawson has put down in the place of your Brother I am sorry to inform you that the meeting is appointed at so early an hour as ten o'clock tomorrow Morning.—

I hope you will let me have the pleasure of your Company to a family Dinner, & if Mr. Wright can accompany you I shall be very glad to see him.

I am Dear Sir very sincerely Yours &c:

K. Lonsdale Wednesday Morning." H. BICKERSTETH.

By GURNEY, B.—Mr. Batty, how far is Kirkby Lonsdale from Hornby?—Seven miles.

Mr. Anthony Battersby Tomlinson, sworn. Examined by Mr. Sergeant ATCHERLY.—Are you clerk to the trustees of the Kendal and Kirkby Lonsdale turnpike road?—Yes.

Digitized by Google

Digitized by Google

Digitized by Google

Have you here a book of the trustees?—Yes.

Refer to the date of the 17th January, 1797.—Yes. (Witness doing so.)

Is that the list of the commissioners?—No, this is the entry of the meeting.

Read the entry. (Witness proceeding to do so)—

By GURNEY, B.—It is the proceedings as to the election of Mr. Dobson, as clerk?—Yes, my lord.

What are the signatures to the proceedings?—There are Henry Bickersteth, A. Shepherd, W. Richardson, W. Taylor.

Is John Marsden one?—Yes.

Carus Wilson, and Reginald Remington?—Yes.

The ATTORNEY-GENERAL.—Under the date of January 6th, there is a memorandum as to the qualification of Mr. Marsden, and his authority for voting; he signs both the one document and the other. (Handing the book to the opposite counsel)

Sir J. SCARLETT.—He qualified in 1797, having been elected in 1783.

Have you any other instance of that sort?—None.

Where is the road in question?—It is the road leading from Kendal to Kirkby Lonsdale.

Is it not from Ingleton to Kirkby Lonsdale?—It is part of the way; it is from Ingleton to Kirkby Lonsdale, and through to Kendal.

The ATTORNEY-GENERAL.—That is the same Richardson who wrote those letters, and whose writing was proved this morning; he is an attorney at Kendal. Here is the king's printed copy of the act of parliament, shewing that Henry Marsden was one of the trustees.

GURNEY, B.—That is his brother?

ATTORNEY-GENERAL.—Yes, my lord, the name of Oliver Martin, instead of *Marton*, I see is here.

The deposition of Richard Fayrer (of which his lordship was furnished with a copy) in chancery, was then verified by Mr. Cuvelje, the agent of the defendant's attornies, and read by the clerk as follows—

Richard Fayrer, of Burnley, in the county of Lancaster, gentleman, formerly one of his Majesty's foreign messengers, aged seventy-eight years and upwards.

To the first interrogatory this deponent saith, he has known the complainant for the last three months or thereabouts; the defendant, George Wright, for thirty-five years or upwards; the defendant, Anthony Marsden, for thirty years or thereabouts; and the defendants, J. M. Wright and Margaret Wright, from their infancy; but that he doth not know the defendant Charles John Lister.

To the second interrogatory this deponent says, that he was well acquainted with John Marsden, late of Hornby Castle, deceased, in the pleadings of this cause, named. The deponent's acquaintance with the said John Marsden commenced about forty years ago, at which time deponent lived at Wray, about a mile from Hornby Castle, and a mile and a half from Wennington Hall. Deponent lived at Wray twenty-one years, and then removed to Clincefield, in the parish of Tatham, and about two miles from Hornby Castle; and deponent continued to live there until five or six years ago, when he removed to Burnley; and deponent says, that, from the commencement of his acquaintance with the said J. Marsden, until he left Clincefield, deponent was upon very intimate and friendly terms with the

Digitized by Google

said J. Marsden, and dined with him several times, both at Wennington Hall and Hornby Castle, and has walked, and gone a hunting, and played a game at whist with him, but never remained all night at his house.

To the third interrogatory this deponent says, that, during the period of his acquaintance with the said J. Marsden, he, the said J. Marsden, was in a sound state of mind, if ever man was, and conversed and conducted himself, on all occasions, like a gentleman. Deponent did not observe any difference in his behaviour in the presence of strangers. That he was polite and attentive to them, and particularly to ladies. That he was capable of taking care of himself, and transacting the ordinary business of life, and of managing his own affairs, except in making large sales or purchases.

To the fourth interrogatory this deponent says, the said J. Marsden possessed a common intellect and understanding; but he would have been better if he had seen more of the world; and, from what deponent saw of him, he never expected that any inquiry, as to his sanity, would have been made. That his memory was good; but, with that exception, there was nothing particular in his mind or memory. That deponent never observed in him anything of silliness or weakness of judgment. Deponent has no doubt that he was capable of forming a reasonable and proper judgment, at all times, in things requiring the exercise of judgment or discretion. That, in deponent's opinion, he was competent, if put to it, to appreciate the value of property; but that he never appeared to exercise himself in such matters. Deponent never knew the said John Marsden agree for the sale or purchase of property; but thinks he was capable, and had intellect sufficient for it. That deponent thinks, honestly speaking, he was certainly competent to dispose of his property by will or otherwise, and to give proper and rational instructions in such matters, of his own accord, and without the suggestion of others. That so far as regarded the improvements in his gardens, this deponent has heard the said J. Marsden express his own opinion respecting the management of his property, and that he exercised his own judgment therein. That upon one occasion deponent remembers the said J. Marsden, when they were together at Hornby Castle, differ in opinion with Mr. Worswick and a Roman catholic priest, upon some subject connected with religion, and expressing his own opinion thereon; but the argument dropped, on the defendant, George Wright, observing, in a mild manner, to the said J. Marsden, that it was a subject he knew nothing about. Deponent never saw the said J. Marsden write or compose any notes or letters, and to this interrogatory he cannot further depose.

To the seventh interrogatory this deponent saith, that the said John Marsden was a timid rider; but deponent never saw him otherwise fearful. Deponent has many times seen the said John Marsden walking alone, both at, and in the neighbourhood of Hornby Castle, so far as three miles from home, and has also seen him riding, attended by a servant on horseback, and that on all occasions, he appeared to be perfectly at ease, and in no want of assistance.

To the eighth interrogatory this deponent says, that the said J. Marsden played on the bass viol or violoncello very decently, and played "God save the King," and several tunes of a lively kind; that he played from notes, with a book before him, and appeared to have some knowledge of music, and took great delight in it. Deponent has many times heard him play.

To the ninth interrogatory this deponent says, he does not know what persons the said J. Marsden visited, but deponent has seen, as visiters at

Digitized by Google

Digitized by Google

Digitized by Google

Hornby Castle the late Bold Fleetwood Hesketh, Esqr., of Rossall Hall, and his brother, Robert Hesketh, Esq., formerly of Wennington Hall; the late Mr. Baldwin, of Lancaster; the Rev. Thomas Butler, of Ridding; and several of the more opulent neighbouring farmers, but deponent does not know by whose invitation they came. That the said J. Marsden kept a very fine pack of hounds, and was the principal person in the Hornby hunt, but it did not continue many years. That he followed the hounds in a scarlet coat and black cap. That he took an active part in an election of members of parliament for the borough of Lancaster, on which occasion he gave a public breakfast to the voters in his neighbourhood at Hornby Castle, and took them to the poll at Lancaster, and deponent went with them; deponent has been warden of Hornby chapel, and the said J. Marsden was a regular and almost constant attendant there, and always appeared very devout, and joined in the service in a very proper manner, indeed more so than the generality of people.

To the tenth interrogatory this deponent says, that during the period of his acquaintance with the said J. Marsden, he appeared to deponent to act as the master of the house where he resided, for he seemed to order any thing that was wanting. That deponent once made an application for leave for a party of friends to shoot upon one of the said J. Marsden's manors, and that such application was made to the defendant, George Wright, and that leave was given by a note; deponent does not know by whom it was signed, but thinks it was by the said George Wright; deponent does not know who invited the visiters generally to Hornby Castle, but he has himself been invited by the said J. Marsden, and by the said George Wright. That the visiters, the family, and servants, always treated the said J. Marsden with great respect; deponent never saw anything to the contrary, and that the said J. Marsden conducted himself towards them in a very gentlemanly way. That Mrs. Cookson, when living, sat at the head, and the said J. Marsden at the foot of the table; and afterwards, and when the said George Wright was married, he sat at the foot, and Mrs. Wright at the head during dinner, but after the cloth was removed, the said John Marsden took the said George Wright's place, passed the bottle round, gave the toasts, and ordered what wine was wanted, and conducted himself in a proper and gentlemanly style; that both before and after dinner he was very particular in saying grace.

To the thirteenth interrogatory the above-named deponent, Richard Fayrer, upon his oath, saith, that the defendant, George Wright, stood in the relation of steward and agent to the said J. Marsden, and acted in that capacity; that whenever deponent saw them together, they were very polite and civil to each other; deponent cannot say that he ever perceived the said George Wgirht or any other person exercise any control or influence over the said J. Marsden, and never saw the said George Wright act in an overbearing manner towards him, nor did the said J. Marsden seem to deponent to be under any restraint whatever; deponent had many opportunities of seeing the said J. Marsden, in the absence as well as in the presence of the said George Wright, and that no difference was observable in his conduct on those occasions, and deponent never saw either of them reprove or control the other. Deponent does not think the said J. Marsden was liable to be imposed on, or unduly influenced; and, had any one attempted it, he was not a likely person to have submitted to it, but was very stiff.

To the fourteenth interrogatory, this deponent saith that the said J. Marsden visited the late Mr. Anthony Lister, of Giggleswick, and deponent thinks

Digitized by Google

he went almost every year whilst the said A. Lister lived. Deponent does not know what degree of intimacy or relationship subsisted between them, but the said Anthony Lister made long visits at Hornby Castle, and the said John Marsden spoke of him as a relation. That deponent remembers two brothers of the complainant's; one of whom was a lieutenant-colonel in Washington's light horse in the American army, and deponent thinks he was older than the complainant; and the other, called Henry, who was a little deformed man, and lived at Hornby. And deponent remembers, that whilst the said John Marsden lived at Wennington Hall, the said lieutenant-colonel Tatham spent several months there, and went away hastily, and was never there again to deponent's knowledge. That the said Henry Tatham resided with the said John Marsden at Wennington Hall, and seemed to deponent to be at one time a great favourite wih him; and that after the said John Marsden removed to Hornby Castle, deponent has seen them walking together, and has heard the said John Marsden speak of him as an agreeable companion; but never heard the said John Marsden speak of the complainant at all, nor of his family, except as before stated. Deponent has heard the said John Marsden say, in speaking of the said George Wright, that he was very happy in having so good an agent. Deponent never heard the said John Marsden say anything respecting the disposition or enjoyment of his property after his death. That, in deponent's opinion, the said George Wright managed the said John Marsden's property, in his lifetime, remarkably well, and gave him great satisfaction.

To the last interrogatory this deponent cannot depose.

RICHARD FAYRER.

At a quarter past five o'clock, the court adjourned to nine o'clock next morning.

FOURTH DAY.

Mr. Thomas Lamb, sworn. (Examined by the ATTORNEY-GENERAL.) Are you acquainted with the hand-writing of Admiral Tatham?—Yes, I am.

Is that his hand-writing?—(handing the letter, which was subsequently read.) Yes, I believe it is.

ATTORNEY-GENERAL.—The other letters are in court; they were all handed to the other party last night.

The clerk then read the caveat of Admiral Tatham to William Sharp, Esq., dated 1st July, 1826, as follows—

"To William Sharp, Esquire, Deputy Registrar.

SIR,—I Sandford Tatham of the Close of the Cathedral Church of Lichfield in the County of Stafford, but now resident at Lancaster in the County of Lancaster a Rear Admiral in his Majesty's Fleet, as heir at Law and next of kin of John Marsden late of Hornby Castle in the said County of Lancaster, Esquire, deceased, request and authorize you to enter a Caveat against the granting Probate of the Will of the said John Marsden, deceased, or Letters of Administration to his personal Effects in the Consistory Court kept at Lancaster aforesaid. I am Sir,

Yours very respectfully

SANDFORD TATHAM.

Lancaster, first July, 1826. Rear Admiral.

(Addressed) William Sharp, Esquire, Deputy Registrar, Lancaster."

Digitized by Google

Digitized by Google

Digitized by Google

Cross-examined by SIR J. SCARLETT.—Did you compare that with the original (handing a paper) ?—I wrote it.

Do you not know that it was sent by the Admiral, by the advice of his counsel ?—I did prepare it, under the advice of counsel.

Re-examined by the ATTORNEY-GENERAL.—You are an attorney, are you ?—Yes.

Are those also in the hand-writing of Admiral Tatham ?—I believe they are.

Had that advice been taken before Mr. Marsden died ?—I believe it was; I was very unwell; I was in Higgin's office.

How long before he died ?—I do not recollect.

ATTORNEY-GENERAL.—The whole of these letters, and also the intervening papers of John Marsden, dated the 10th and 11h April, 1797, are put in.

Miss Ann Sheepshanks, sworn. (Examined by Mr. WIGHTMAN.) I believe you are cousin to Mrs. Lister Marsden ?—Yes.

Did you know the late Mr. Marsden ?—Yes, I knew him very well.

In what year did you first become acquainted with him ?—In the year 1810.

Was it at Gargrave, at Mr. Lister Marsden's, that you used to see him ?—It was.

Was there any misunderstanding between him and Mr. Lister Marsden, during the time you visited there ?—I did not hear of it till a long time after.

Was there an interval when you did not see him ?—Yes.

Have you been at the house at the same time with him upon a visit ?—Yes.

Did you use to breakfast, dine, and spend the day in his company ?—Yes, always.

When was the last year you saw him ?—In 1820.

Have you been in his company alone ?—Yes.

Have you walked out with him ?—Yes.

What were his manner and behaviour ?—He was a very well-bred man, very courteous, but rather of the old school.

He was short-sighted I believe ?—Yes, very.

Did he stand god-father to young Charles John Lister ?—Yes.

Were you the god-mother ?—Yes, I was.

Did he speak to you as to his god-son, as to how he wanted him to be brought up ?—He said he preferred him being brought up to the law.

Did he give any reason for that ?—Yes, he said if ever he became a country gentleman, he could perform the duties of a county magistrate.

Do you recollect, when young Lister was two year's old, some proposition being made about taking him to church ?—Yes, I wanted to take him to church, if he would promise to behave well, and would not talk. Mr. Marsden said, he thought I had better leave him at home. I took him, and he behaved very ill.

Have you been at church with Mr. Marsden ?—Yes.

What was his conduct and demeanour at church ?—He behaved very well.

Did he use to join in the responses ?—Yes, and in rather a loud voice.

Upon what terms was he with Lister's family ?—Very good terms indeed.

Has he ever spoken to you of them ?—He generally praised Mr. Marsden's manner of doing the duty, after he came from church.

GURNEY, B.—(to the witness) I will read over all that you have said, and

Digitized by Google

I will thank you to speak a little louder. (The learned judge accordingly read over the evidence of the witness, and she confirmed it as being correct.)

By GURNEY, B.—Did Mr. Lister Marsden officiate at the church when John Marsden was there?—Yes.

By Mr. WIGHTMAN.—Do you remember his proposing to hear young Lister his catechism?—Yes, I do.

Did he make any observations upon the subject to you?—When the child was christened, he told me it would be my duty to teach him the catechism.

Have you ever heard him speak of Mr. Wright and his family?—Very often, and of Mr. Wright particularly.

In what terms?—He frequently said that he had a great regard for him and the children, and I heard him speak of the eldest son, and all the young ladies. I do not remember any thing being mentioned as to the eldest.

Did he appear to you to be a well-educated man?—By no means.

Did he ever speak to you at all upon that subject?—He regretted he had not been better educated, and that he should have been very different if he had had the ordinary advantage of education. He was very anxious upon that subject. With respect to young persons, he felt a particular interest in the Wrights and the young Marden's, and said they should be well educated. He observed that Wright was a very excellent father, and that his family were very well brought up, and that the children would have the advantage of education.

From what you saw of Mr. Marsden are you of opinion that he was capable of making the will he made?—I think he was.

Would you yourself have attested his will, if required?—Just as soon as that of any other person.

Cross-examined by Sir J. SCARLETT.—Are you first cousin of Mrs. Lister Marsden?—Yes.

Were you in the habit of visiting Mr. Lister Marsden?—Yes, every year.

Mr. Marsden came there two or three times a year, did he not?—Not that I know of. I went once or twice.

You generally met him?—No, not always; we both visited about twice a year.

You are no relation of Mr. Lister's?—No.

You saw his wife?—Yes.

You are a sister of Mr. Yorke?—Cousin; he is Mrs. Lister Marsden's brother.

Perhaps you stated to him some facts you had heard at the time as to Mr. Marsden?—I did.

Do you recollect about the period of those differences that once existed, what had taken place—can you mention the year?—No, I cannot.

Do you recollect when the subject of the difference was?—I never knew of it from any authority.

Perhaps you heard Mr. Lister Marsden mention it himself?—Yes.

The ATTORNEY-GENERAL.—Does your lordship think whatever Mr. Lister says is evidence?

GURNEY, B.—You have put questions in that way a good deal yourself. I should say, strictly speaking, it is not evidence; but you have gone from it much, both of you.

Do you know that the difference was, as to the sum of money he had been obliged to pay for Wennington Hall?—Yes, I believe it was.

Digitized by Google

Digitized by Google

Digitized by Google

Did he not consider that Wright had made too hard a bargain with him? Yes, he considered that he had done so.

Did he not lay that upon Mr. Wright?—No, not particularly; I think he said that too hard a bargain had been made with him.

Did he not say he had complained to Wright about it?—No.

How much had he given for it; was it not about £27,000?—Yes, I believe it was.

It was the Old Hall—Wennington Hall—was it not?—Yes.

He did not live there?—No, he let it.

Do you remember the time of his purchasing Wennington Hall?—I do not remember it.

That was the subject of the sullenness betwixt them, was it?—I believe it was.

Was not the bargain made with Mr. Wright?—Not that I know of.

Did not Mr. Lister tell you so?—No.

ATTORNEY-GENERAL.—This is not evidence.

Witness.—He never did. I should prefer telling all I know of it. All that I know is, that Lister Marsden said he had used a harsh expression to Mr. Marsden of Hornby Castle, relative to the price he had to pay for Wennington Hall.

I will just remind you of what you did say the last time when I asked you the question, that Lister Marsden stated that he thought he (Wright) had most improperly made a hard bargain. Did you not say so formerly?—I believe I answered your question by stating that it was settled by Mr. Wright, but that the expression was used not to Wright but to Marsden.

Was it an expression about Mr. Wright?—No.

Was that expression about Mr. Wright?—That I do not know; it was about the price of Wennington Hall.

Did you ever know Mr. Marsden make any bargain at all himself?—I never did.

Did you ever hear of his doing so?—No, I never did.

Did you believe him capable of making a bargain for the sale of an estate?—I do not feel competent to answer the question as to a matter of business. I presume he would take the opinion of some one, as to that.

Do you think him as competent as you are yourself?—I think myself possessed of more ability than Mr. Marsden, though not with much more knowledge as to selling an estate.

That does not lie in your way; but let me ask you whether you be a proficient in music?—I do not think so; I know something of it.

You play upon the piano forte?—Yes.

You play many pieces of music, do you?—I do understand it.

You play at sight, do you?—Yes, sir.

Was there a piano forte at Lister's?—There was.

Did you sometimes amuse yourself upon it?—Very often.

Did Mr. Marsden play the violin when there?—Constantly.

Did he ever play with you?—No, never.

Did he ever offer to do so?—No, he never did; he was an extremely shy man.

Did you know whether he had a knowledge of music or not?—Not to my own knowledge. I knew he played upon the violin, but I never was in the same room when he played.

You have heard him playing?—Yes, as I went up stairs.

As you heard him playing, how came you not to invite him to accompany

Digitized by Google

you ?—I should never think of inviting any one to bring a violin into my room. It would have been taking a liberty. If Mrs. Lister did not do it. I should not have liked to do it. She did not care for his violin.

What tune did he play ?—He played the Irish tune of "Cary Owen."

Did he play it well ?—I cannot say positively.

Did you hear him play "Dainty Davie ?"—No, I did not know "Dainty Davie."

What sort of a player was he ?—I did not think him a good one, certainly.

Did you think him a bad one ?—Yes.

Did you think him a very bad player ?—I did not hear enough to form a very correct judgment of it.

From what you did hear, was he not, to the best of your judgment, a very bad player ?—That I cannot say, as I did not know enough of his playing, to say as to that, upon my oath.

From what yot did hear, did you feel any desire that he should accompany you ?—No, I did not.

Were you not sorry that he did not do so ?—If it had given him pleasure, I must say it would have given me none at all. I should not have been sorry if it would have given him pleasure.

I entirely approve of that sentiment—but you never took the pains to ascertain whether it would have given him pleasure or not ?—No.

And he never offered himself ?—No, he never did.

Did he not play two or three hours a day ?—In rainy days he used to do so; he might do so on other days, but I cannot say exactly.

Did you not say so before ?—I did not say before that he used to do it every day; but he certainly fiddled a great deal.

Did you not say he bestowed two or three hours a day in fiddling ?—No.

Did you not say that he played two or three hours a day ?—I might say so, but I do not recollect.

Was it not true ?—I should not say three hours a day.

But generally speaking ?—I cannot say generally speaking.

Did you not say the last time you were examined, that he bestowed much time upon his fiddling, and that he devoted to it generally two or three hours a day ?—Not generally, certainly, because I never knew it; all I can say is, that he fiddled a great deal.

Was it in his bed-room he played ?—It was in a small room adjoining his bed-room.

A dressing-room ?—Yes.

Did you think him a man of talent ?—No, I did not.

Did you think him a weak man ?—Rather so.

Now let me ask you, did you not mention, the last time, the class you would put him in, if you were to divide mankind into two classes ?

The Attorney-General.—That was not volunteered.

Gurney, B.—No, certainly not—there were two questions before that.

Witness.—No, my lord, I think it was my own statement; I divided mankind into two classes, and I put Marsden in the second.

Was it not your own suggestion ?—Yes, yes, I believe so, for I should certainly call him a second rate man. You asked me what I meant by a second rate, and then I put the proposition now alluded to, and said if mankind were divided into two classes, I should put him in the second.

Now let us carry it a little farther—suppose you divided mankind into three classes, what class would you then put him in ?—In the third class, undoubtedly.

Digitized by Google

Digitized by Google

Digitized by Google

Will you go a little farther, and suppose they were divided into four classes?—No. I had not capacity enough to do that; I would rather be excused doing so.

Did you think he had the intellect of an ordinary boy of twelve years of age?—Yes, I think he had; I dare say he had.

Was he as capable of instruction from the time you first knew him, till you last knew him—was he as capable of instruction in respect to intellect as a boy of twelve years old?—No, I think he never would have acquired equal benefit from instruction. The time was gone by for his making improvement.

Suppose you were to teach an ordinary boy a lesson, and make him understand it by explaining it, do you think Marsden was as competent to understand it as a boy of those tender years?—I cannot say that a man of fifty was not as likely to be able to learn lessons as a boy.

But I think it my duty to put the question to you thus:—Do you believe that John Marsden had the capacity of an ordinary boy of twelve years of age?—When people of very advanced age attempt to learn.

To learn and digest as boys do?

The Attorney-General.—To digest a dinner my friend perhaps means.

You understand what I mean by digest, notwithstanding my friend's observation?—Yes, I can easily understand that.

I was asking you whether you thought Marsden as competent to learn and to understand, or to digest what he was instructed in, as a boy of twelve years old, of ordinary capacity would have been?—I do not think your question is a fair one; I do not think I can answer it.

Do you mean to abide by the answer you gave before, that you think he had the knowledge and capacity of a boy of twelve years of age?—I cannot say.

I think myself entitled to ask the question whether he was capable of learning and understanding; I do not say improving?—Am I to understand you mean grammar?

Any subject that would exercise the understanding?—I never saw him have any great difficulty in understanding anything that was brought before him.

Have you ever spoken of, or discussed anything before him that a boy of twelve years of age could not understand?—No.

I believe the question is a legal question to be put—I ask you to declare whether you be of opinion that he had the same power of intellect as a boy of twelve years of age, of ordinary capacity, generally has?—I do not know the intellect of boys of twelve years of age.

You know your own cousin?—Yes; I think at twelve years old Marsden was as capable of understanding anything as that boy was at twelve.

By Gurney, B.—You mean to say, you think Marsden was, at his advanced age, equal in intellect to that boy at twelve years of age?—Yes, I think so.

Sir J. Scarlett.—Do you think he was capable of reasoning better than an ordinary boy of twelve years of age would have done?—I do not; I think I answered that before.

I beg your pardon?—What did I say?

I am not obliged to tell you, but I will tell you?—I will be obliged to you if you will.

Digitized by Google

Look here—You recollect my saying this to you,—Would a boy of twelve years old be equal to Marsden in point of capacity and intellect; and did you not say he was very different from boys of twelve years old?—I meant he was not the least like a boy of twelve years old, his manners were so different that I think there was an impropriety in comparing them.

In dress and manner, and size, he may have been very different, but I do not mean that, I mean in regard to their capacity for learning?—I think that a boy of twelve years old would get on far before him if they began to learn together.

You said you would put Marsden into the third class. Do you think that any education whatever could have raised him above the third class?—None. (Witness hesitating.) Do you mean to say you put him into the first class?

No?—I beg your pardon,—I thought you said the first class—I cannot say as to that.

Would any degree of education raise him above the third class?—I cannot tell what education would have done with assistance.

Re-examined by the ATTORNEY-GENERAL.—Have you been much in the habit of associating with boys of twelve years of age, so as to be able to judge of them in regard to their capacity?—I never knew but one or two in my life.

Do you think, Miss Sheepshanks, that Mr. Lushington, Colonel Lushington, and Mr. Baron Bolland, would not have been able to answer those questions better than you? (No answer.)

GURNEY, B.—I do not think that question can be put.

ATTORNEY-GENERAL.—Pray Miss Sheepshanks were you present at the former trial at Lancaster?—Yes, in the early part of it.

Were you present when those several gentlemen were examined?—Yes, when Mr. Lushington and Baron Bolland were examined.

Were any of these questions put to either of them, as to the capacity of boys of twelve years of age?—No: those questions were put to none but myself according to what I heard when in court.

You say that Marsden was above fifty years of age, when you first knew him?—Yes.

By Sir JAMES SCARLETT.—Of whom did the family at Belle Hill consist? Mr. Lister Marsden was the only child resident there.

There was the senior Mr. Lister?—Yes.

How many children lived at Gargrave?—Three.

Did you know the Miss Wrights?—I never saw one of Wright's family.

By the ATTORNEY-GENERAL.—Do you know the hand-writing of Mr. Lister Marsden, the father of Mr. Anthony Lister.

Peter Hesketh Fleetwood, Esq., sworn. (Examined by Mr. Sergeant ATCHERLY.)—Were you high sheriff for the county in 1830?—Yes.

And you are now member for Preston?—Yes.

When were you last at Hornby Castle?—I went to Hornby in 1817.

Did you know the late Mr. John Marsden?—Yes, very well.

How often were you in the habit of seeing him?—I went generally every year, from 1817 to 1823.

Did you go to visit Mr. Marsden?—I did.

Did you see him on those different occasions when you visited there?—I did.

Digitized by Google

Digitized by Google

Digitized by Google

What were his manners ?—Particularly polite.

What was his disposition ?—Particularly mild.

Did you discourse with him upon the general topics of the day ?—I did.

Did he take an interest in the general topics of the day ?—Yes, certainly.

What was your opinion as to his competency; was he capable of attending to the ordinary affairs of life ?—I have no doubt of it.

If you had been asked to attest his will, would you have had the least difficulty or reluctance in doing so ?—Not in the least.

Is that a letter in the hand-writing of your mother, (handing it) ?—Yes, she is dead.

The ATTORNEY-GENERAL.—I read that. Your lordship will take a note of it.

GURNEY, B.—Let me have a copy of it.

The ATTORNEY-GENERAL.—I think I handed it up to your lordship.

Cross-examined by Mr. CRESSWELL.—When was it you first went to visit Mr. Marsden at Hornby ?—In 1817.

What time of the year was it ?—In August.

During the shooting season ?—Yes, it was.

How old were you at that time ?—In 1817. I should have been sixteen.

You continued your visits occasionally there, until 1823.—Yes.

That would make you about twenty-two ?—Yes.

Had you good sport in August, when you went the first time ?—I do not remember each season, but we had much pleasant sport each time.

How long did you stay generally ?—Three or four days.

Was the weather fine ?—Yes, generally, sometimes we were at home.

How many days did you get upon the moors ?—Three out of the four, I calculate.

Did you see much of Mr. Marsden ?—Yes, of an evening, he was always in the room.

Were you often in his library ?—No, never.

Did you never go into it to look for a book ?—I never went into his own room, which I suppose you mean to call the library. The drawing-room and dining-rooom were the only sitting rooms. There might be books lying about, but there was no bookcase.

Were the Misses Wright at home when you were there ?—Yes.

Were any of them grown up at that time ?—Yes.

Had you music in the evening ?—Sometimes.

Did they play well ?—I do not know that I had knowledge enough to ascertain that; they played agreeably on the piano forte.

Did you ever hear John Marsden play ?—No, never in my presence.

Did you know one of the Misses Wright, who married a Mr. Brancker, of Liverpool; that was Miss Eliza Wright ?—Yes, I believe so.

Had you much conversation with Mr. Marsden ?—Yes.

Do you remember the subject you talked about ?—No.

You have no recollection at all of it ? No, I have not.

Now, from the conversation you have had with him, are you not of opinion that he was a man of a weak mind ?—I have an opinion that he was below the general class of mankind.

Are you of opinion that Marsden was a man of weak mind ?—Rather weak.

Did you ever hear him talk about any books ?—I do not remember the

Digitized by Google

particular circumstances, but I had many conversations with him, I do not remember any of the subjects.

None whatever?—No.

Re-examined by Mr. SERGEANT ATCHERLY.—When you were out sporting you came home to dinner?—Yes.

And he took his place as master of the house?—Yes.

The *Rev. William Nelson* sworn. (Examined by Mr. TOMLINSON.)—Mr. Nelson, are you the curate of Gressingham?—I am.

Is that a perpetual curacy?—Yes.

It is about a mile from Hornby. Is it not?—Yes, about a mile.

Were you acquainted with the late Mr. Marsden of Hornby Castle?—Yes, I was.

When did your acquaintance begin?—About the year 1812.

Did you afterwards begin to visit at Hornby Castle?—Not so much for the first four years. After that, frequently.

When did you begin to visit there more frequently?—About the year 1820. After I was inducted to the living of Gressingham: it was in that year. I afterwards became more intimate.

How long did that intimacy continue?—To the time of his death.

Did you dine at the Castle frequently?—Yes, very frequently.

Upon most Sundays did you dine there?—About twenty times in the year.

Did you sometimes sleep at the Castle?—Yes, I have slept there.

And you have staid there a day or two?—Yes, I have.

Had you an opportunity of seeing and conversing with Marsden during that time?—Yes, I had.

Was Mr. Marsden a subscriber to your school at Gressingham?—He was.

Had he been a subscriber before your appointment to the curacy?—Yes.

Upon your appointment did you make any application to him?—When I was appointed I found he was a subscriber, and I thought it my duty to go and ask him to continue his annual subscription. He said he should certainly do so, so long as the school was conducted properly.

Did he pay his subscription upon that occasion?—Not then. That was not the time of the year when it became due.

Did you afterwards receive a subscription from him?—Yes, I did—at the end of the year.

Do you recollect what the sum was that he subscribed?—Five pounds a-year.

Did you receive it from himself personally?—The two first years I did.

By GURNEY, B.—After that, from whom did you receive it?—He requested Mr. Wright to pay me always.

By Mr. TOMLINSON.—Do you remember receiving the subscription for the first time?—Yes. The first time I called for it he was in the room alone with Mr. and Mrs. Wright; and I said, "I called upon him to ask him for his subscription for the year." He said, "He had not got five pounds in his pocket, but I will fetch it." He then went out of the room, and returned in a few minutes, and handed me a five pound note.

Did Mr. and Mrs. Wright remain in the room or go out?—They remained in the room.

Had you ever any conversation with Marsden about agricultural depres-

Digitized by Google

Digitized by Google

Digitized by Google

sion?—Yes; I remember one evening after dinner, when walking in the garden, I met Mr. Marsden. And, after walking some time, our conversation turned upon the question of agricultural produce, and its depression; and he said every landholder ought to diminish their rents, according to the depression of agricultural produce. I said I agreed with him in that opinion.

Have you frequently conversed with him when by himself?—He made answer after that by saying, "I place entire confidence in my steward, Mr. Wright, and I am sure he will act fairly between me and my tenants."

Have you often seen him with Mr. Wright?—Yes, frequently.

What was Mr. Wright's manner towards him?—Gentlemanly.

And his to Mr. Wright?—Entirely so.

What were Mr. Marsden's manners generally?—Very mild.

And his disposition?—Very placid.

Could you form a competent opinion of his understanding from the opportunity you had of being with him?—I never had much conversation with him upon business.

In your judgment, was he competent to give direction for his will?—I should say so.

Would you have had any hesitation in attesting the execution of it?—None whatever.

Cross-examined by Mr. STARKIE.—Do you say that Mr. Marsden was a man of strong mind?—No; I should not say so.

Should you say that he was a man of weak mind?—I should say he was rather of weak mind.

Is that the result of all the opportunity you have had of seeing him from time to time; that he was a man of rathera weak mind?—Yes, I should say so from the different conversations I have had with him that he was a man of rather weak mind.

Do you draw that inference from general recollection, or from any thing particular, that led to those conclusions?—Nothing particular.

Was that from the general tenor of his conversations?—Yes, from no particular reason.

You have mentioned one conversation you had with him; when was that conversation?—It was three, four, or five years before his death, but I cannot change my memory with that.

Now, was the subject of agriculture frequently the topic of conversation when Wright was there?—No, never.

You do not recollect any other?—No, I do not.

Did you ever hear Wright express those opinions in Marsden's presence?—No.

Do you recollect any other conversation between you and him on any subject that could show any mind?—Not particularly so. It was from the various conversations I had with him.

I want to know, whether, in all the intercourse you had with Marsden, you can mention any other particular conversation than that you have now detailed?—I cannot recollect any other than as to the ordinary topics of the day.

You cannot remark any other conversation than this?—No, I cannot.

Can you recollect any particular conversation from which you draw the inference that he was a weak man. No, I cannot.

You were examined in this cause before, I believe. Yes.

Did you give any account on your former examination as to that conversation?—Yes, I certainly did.

Digitized by Google

Did you then mention the whole of that conversation as to agriculture, and with respect to his confidence in his steward?—I cannot say; I think I did.

With respect to his confidence in Wright?—I should think I did so; if I did not I must have omitted it.

But now you recollect it?—Yes.

Did Marsden, either upon that, or upon any other occasion, intimate to you that he took any share in the proportioning of rents. Not at all.

Did you ever know him transact any matter of business?—No, I do not recollect.

Did he ever mention to you the amount of any rent he received from any tenant?—No.

Or the extent to which the rent ought to be lowered?—No.

Re-examined by the ATTORNEY-GENERAL.—Are you in the habit of registering the conversations you have with different people?—No.

This was some years before he died. Being about eleven or twelve years ago?—Yes, it was; perhaps four or five years before his death.

Do you think you can recollect any conversation with any person twelve years ago?—(No answer.)

Sir JAMES SCARLETT.—He has mentioned one already.

ATTORNEY-GENERAL.—Yes, by God's mercy, he has.

James Braithwaite Garforth, Esq. sworn. (Examined by Mr. MARTIN.)—I believe you live at Coniston in Yorkshire, near Gargrave?—I do.

Did you know the late Mr. Marsden?—I knew a little of him, having met him occasionally at Gargrave with Mr. Lister Marsden.

When did you first meet him?—I saw him occasionally, from 1815 to 1824.

Were you in the habit of dining with him on every occasion you were there during those years?—I think not; I did not dine with him above three or four times.

Did you observe any thing particular in his manner when he was introduced to you?—He appeared shy, timid, and reserved, I thought.

When first introduced; was that so subsequently?—I generally saw him in a large party, and I only met him once at Lister Marden's, when there was no company.

In those large parties, how did he conduct himself?—Very like a gentleman, so far as I could observe.

Upon the occasion, when you dined with him privately, do you recollect any circumstance occurring as to some alterations in Marsden's plan?—Yes; I believe I had been at Kendal a short time previous to meeting Marsden at Gargrave, and the architect shewed me some plans as to some alterations at Hornby Castle; and, in consequence of that, there was some conversation about it after the ladies had left the table.

Did Marsden join the conversation?—I do not remember any conversation, except between him and myself.

What impression did that conversation leave upon your mind as to his capacity?—It left the impression that he was a prudent man. I do not remember the precise words, nor the expressions he used; but my belief is, that he wished to improve the house, without embarrassing himself, with laying out a large sum of money upon it.

From your knowledge of Marsden generally, do you consider him to have been competent to transact the affairs of life?—I thought him a man of

Digitized by Google

Digitized by Google

Digitized by Google

shallow mind, but I saw nothing about him that should have prevented him from attending to the ordinary affairs of life.

Do you consider that he was competent to dispose of his affairs by will?—I do.

Should you have had any objection to have attested his will?—I should not; I thought him competent to make one, and therefore I should not have objected to attest it.

Cross-examined by Mr. ARMSTRONG.—How often did you meet him?—Two or three times at Mr. Lister Marsden's, and once in the neighbourhood.

You think he was a prudent man?—Yes.

What was the conversation that induced you to think he was a man of a shallow mind?—His conversation was mostly upon trifles.

Was it not childish?—I should say not; I never saw him guilty of any impropriety, nor heard him say anything improper.

By his general tone of conversation, you were induced to think him a man of shallow mind?—Yes.

Re-examined by the ATTORNEY-GENERAL.—Did you observe any difference being produced by his being in a large party or a small party?—I thought him improved when I met him alone; when only in the presence of a third person, I had a better opinion of his capacity; he seemed to be improved.

Do you think that persons who saw him only in a large party, as you saw him at first, would have had an opportunity of judging of his mind?—I think his countenance gave the idea of a want of intellect.

Did his general manner and appearance give a fair opportunity of judging of him, till you came to talk with him yourself?—I think I never had any conversation with Marsden at all, except upon the occasion I speak of, when he mentioned the alterations at Hornby Castle.

Did he appear to more advantage in private or in public?—He did appear in private to more advantage.

Mr. Samuel Hailstone, sworn. (Examined by the ATTORNEY-GENERAL.)—Mr. Hailstone, I believe you are a solicitor at Bradford?—I am.

How long have you been a solicitor?—Ever since the year 1789 or 1790. I was articled in the year 1783.

You are the attorney for the Ayr and Calder canal navigation?—I am.

And have had a very extensive practice?—I believe so.

Do you recollect going once to Hornby Castle to complete a purchase any time?—Yes, I think it was in November, 1797; I went to complete a purchase of the manor-house of Bradford, along with a Mr. Pollard and his solicitor, who had purchased a farm of Mr. Marsden, in the neighbourhood of Bradford.

At what time of the day did you get there?—Some time early in the morning.

Was it before or after breakfast?—I cannot exactly say whether it was before or after breakfast, but I am rather inclined to think it was early after breakfast.

How long did you stay?—Till next day, and Mr. Marsden invited us to stay longer.

In what manner of behaviour did he conduct himself, how did you find

Digitized by Google

him?—I found him remarkably hospitable; he was a stranger to me, and I think I never met with more courteous hospitable behaviour any where in my life.

During the day, when you stayed, did he endeavour to make himself agreeable?—The day was spent in shewing us his improvements about Hornby Castle; it was at a time soon after he had purchased Hornby Castle.

In the course of the morning, were you a good deal with him?—Yes, I think a good deal; but it is so long since (being in 1797), that I cannot charge my memory with it—he wished us to stay till next day, to go with the hounds with him.

Did you dine there that day?—Yes.

Did you stay there that night?—Yes; and for some time next day.

Did you converse with Marsden upon the business you came upon?—O yes: in general terms. If I recollect aright, he did not execute the deeds till they were explained to him, and approved of.

Did he appear to understand the explanation that was given to him?—Perfectly well.

Have you the slightest notion in the world that he did not understand them?—Not the slightest, or else I should not have completed the purchase. Mr. Tetley and Mr. Pollard were completing their purchase at the same time, and those parties would not have done it if they had suspected that he did not understand what he was about.

What was the amount of that purchase?—I forget; the deeds are here, they will express it. It was not a large purchase; it was the old Manor-house, with some other old buildings.

As to the deeds granted by Marsden to Tetley, are those them; (handing the deeds alluded to)?—Yes: those were the deeds; witnessed by myself and Joseph Bently, attorney, at Bradford, and occasionally the solicitor of Mr. Marsden, and the steward of Bradford court.

What was the amount of the purchase money?—It was £380; it was but a small purchase; it was the old Manor-house.

Did Marsden himself make any inquiries upon the subject?—No, I do not recollect that he did particularly.

At the time you saw him, in your judgment had he capacity to dispose of his property by will? I certainly should think so from what I saw.

Have you any doubt of it?—None at all.

Should you have had any hesitation in preparing his will, and attesting the execution of it? None in the world; any more than his execution of the deeds.

Did you know the late Mr. Ferrand?—Yes.

Is that his hand-writing; do you know it, (handing a letter)? Yes.

The Attorney-General.—There were some deeds executed by a person of the name of Holden?

Who was Holden, do you know?—He was steward to Major Ferrand, and had some property in the neighbourhood.

By Gurney, B.—Was he an attorney?—No; he was more in the nature of a land-valuer and commissioner. The present Mr. Ferrand, who succeeded to the estate, married his daughter.

The Attorney-General.—The name is to some of the deeds. Perhaps my friend will admit them.

Sir J. Scarlett.—Yes.

Digitized by Google

Digitized by Google

Digitized by Google

ATTORNEY-GENERAL.—William Holden was a witness to the deed of the 5th November, 1794. (No. 16.)

By the ATTORNEY-GENERAL.—Was Major Ferrand a gentleman of character and property?—Of very considerable property, and of very high character indeed; no man more so.

Sir J. SCARLETT.—His character is not a question here.

Witness.—I should not have said so unless I was asked the question.

SIR J. SCARLETT.—Then it was the fault of the counsel.

You know the practice of registering deeds in Yorkshire?—Yes, for about half a century.

Is that deed registered that you look at?—Yes it is.

In registering deeds in Yorkshire, is the purport of the deed generally stated?—No; the act of parliament requires that the parties, the parcels of the premises, and the witnesses, should be described and inserted in a memorial, which memorial is lodged in the register.

I want to know, if any body is desirous of knowing who are the purchasers of property, and who are the witnesses to the deeds—can that be ascertained by the register?—Very readily, and the description of where the witnesses reside.

Is the obtaining of that information a matter of any difficulty?—None in the world.

Is it attended with any great expense?—None in the world, or at most a shilling or so.

Do they pay something for an extract?—Yes.

Do you know if Mr. Marsden had other property in Yorkshire?—He had the manor of Bradford a large market town, containing about 20,000 inhabitants. The manor of Allerton with Wilsden, and a farm and some other places.

By SIR J. SCARLETT.—What was the purchase money of the manor of Bradford?—I do not know; I was not concerned in that purchase; I was not privy to the sale.

What was the deed you wished executed?—It was a deed for £380.

What was that for?—For the manor house, an old house.

By the ATTORNEY-GENERAL.—Is that Mr. Holden's hand-writing (handing a paper)?—Yes, undoubtedly.

Was the contract afterwards completed according to the purchase?—Yes.

By SIR J. SCARLETT.—Who purchased the manor?—Benjamin Rawson.

Do you know what the price of that was?—I do not know; the deeds are there and they will speak for themselves.

By Mr. MARTIN.—Was it £2,100?—Yes; I was not concerned for either of the parties.

By SIR J. SCARLETT.—Was there any waste land?—Yes: there was a considerable common, but it is now covered with buildings.

That was in 1797, was it?—No, it was in 1795.

The deed was executed in 1797?—The deed I was concerned in was executed in 1797; but this was a previous purchase.

Mr. Pollard attended to complete the purchase, of what?—Of a farm.

Do you know the value of that?—It was of no great value then, but it is valuable now. It was within a mile and a half of Bradford.

Digitized by Google

Was it a thriving place in 1795?—No; the grass was growing in the streets.

When did it begin to thrive?—About fifteen years ago. In the two last census the population has doubled since that time.

You only saw Marsden at that time?—Only that time.

And you came away with a grateful admiration of the attention you received from him, and all the family?—Yes.

Was Wright there?—Yes, all of them.

Was he a witness to any of the deeds?—He was not a witness to mine; but I have no doubt he was a witness to some of the others.

They were explained in his presence, you say—did Wright explain them?—I cannot say; I explained mine, and most likely in Wright's presence. There was also Mr. Bently, who was acting as Marsden's solicitor; he is dead now.

He was his solicitor partly?—He was not his solicitor at Hornby; but, for the property at Bradford, he was his solicitor.

Wright was present, to the best of your recollection?—Yes, I think so—no doubt of it—Mr. Marsden wished us to stay that day, to go out with the hare hounds. I never was much of a sportsman myself; but it happened to be a frost, and that amusement was postponed.

Did you stay during the night?—Yes. One night; having dined there that day, and passed the evening.

Did Marsden entertain you with the violin?—No.

You do not remember any particular subject of conversation?—No, I do not.

He was very courteous and civil?—Yes, he was. He struck me as being a good specimen of the old school.

And not as being a weak man?—He struck me as being a very indolent man, disinclined to business, and rather shy.

Did he strike you as being a weak man, from the conversation you had with him?—Yes; rather weak and simple—a weak man in intellect, but not certainly an idiot—he knew right from wrong. There are many men that are weak men, who know right from wrong.

What did you try him in, to ascertain that he knew right from wrong?—Nothing particular, but the conversation of the day, and his hospitality.

He knew it was right to be hospitable to his guests, and that to be otherwise would be wrong?—He was very punctilious on points of ceremony.

What other subjects of conversation had you with him, to enable you to distinguish that he knew right from wrong?—When those deeds were explained, he knew it was a sale, and that it was proper to sign those deeds.

How did he know that it was a sale?—He might know it as other people did. If I were told I must sign deeds, I should naturally ask what they were. He knew he had made a sale, and that we had made a purchase—I had the money to pay for it myself.

Did you pay it to himself?—No, I do not recollect; I put it upon the table. I have paid many large sums to gentlemen who never took up a farthing of the money, but left it to their agent or man of business to take it up and count it, or ascertain that it was right; what became of it afterwards, in this case, I do not know.

But I ask you, what were your grounds for knowing that he knew right from wrong?—Can you give me any particular circumstance, that makes

Digitized by Google

Digitized by Google

Digitized by Google

you draw that inference that he knew right from wrong?—No; there was nothing in particular, but I collected it from his general state of knowledge—from his general habits, and from his general conversation. I cannot tell the particulars. In the year 1797, I went, prepared to induce him to execute the deeds, or complete the purchase. I can only speak to what I thought, from what was the impression on my mind.

You can give the jury an opportunity of judging upon the subject, as to whether your impression were correct or not?—I connot give you particulars.

Had you any conversation upon any particular subject, that enabled you to judge that he knew wright from wrong?—From his general manner, when he pointed out particular improvements of the castle.

Then you do recollect something?—I stated that before. He pointed out particular improvements when he took us round the castle; I should infer from that, that he was perfectly competent to judge of right from wrong.

I only wish to have the grounds of your inference?—If I knew anything I should not withhold it.

At the time you went there, you had no suspicion of anything wrong?—No, none at all.

When you were there, you observed nothing wrong in his manner?—No: he was very polite.

He was a weak man, you say?—Yes.

What made you infer he was a weak man, when he was civil and polite to you, and there had been no conversation particularly which made you think he was a weak man?—He was frivolous in his manner.

Was his conversation about trifles?—Yes, about trifling things.

He was trifling and frivolous in his manners and his conversation?—Yes.

He was a weak and simple-minded man, was he?—Yes, like many others.

Re-examined by the ATTORNEY-GENERAL.—During the time you were there, how many hours do you think he was good society?—I am sure I cannot exactly say; I cannot speak, to any degree, of his judgment—I cannot say he was always so.

By Sir J. SCARLETT.—Did he entertain you with the violin?—I do not recollect.

The ATTORNEY-GENERAL.—You did ask him that question already, and he said he did not.

Sir J. SCARLETT.—We are all liable to short memories.

By the ATTORNEY-GENERAL.—How long were you in his society?—Several hours.

You say he talked about trifling things?—His manners were not those of a strong-minded man—any person might see that.

Did his conversation, or his manner, or any thing else, give you any idea of his incapacity to transact business?—Not in the least in the world—general business.

Mr. John Gardner sworn.—Examined by Mr. Sergeant ATCHERLY.—I believe you are a solicitor at Garstang?—Yes.

And one of the coroners of this county?—Yes.

When did you first see Marsden?—Upwards of twenty years ago.

Where was it?—At Hornby Castle.

Digitized by Google

How long did you see him on that occasion?—Three or four hours; I dined there, and I saw him both before and after dinner, and at dinner.

Had you any conversation with him?—Yes.

Do you remember what was the topic upon which the conversation turned?—Yes; shortly after dinner he addressed me particularly; I think we were not above four or five of us at table. He spoke of my profession and the way in which many had risen from the bar to the bench; he mentioned several names of those he knew had done so. I was pleased with the manner in which he handled the subject.

Do you remember any name being mentioned?—I remember he mentioned Mr. Justice Gould, and I think he said that he had no male children, but that one of his daughters married an Irish earl, earl Carroll.

Was there any other name mentioned?—He named the Lowther family and some other families.

Did he mention Lord Kenyon?—Yes, as having married another daughter of Mr. Justice Gould.

Did you see him upon any other occasion?—Yes, and dined with him, and he would recognize me in company, and drink wine with me.

From what you saw of him, was he, in your opinion, competent to make a will?—I should think so; I thought him well informed upon any subject I addressed him upon.

Would you have attested any deed or will of his execution?—Yes, certainly.

Would you have had any reluctance at all?—None whatever.

Cross-examined by Mr. Cresswell—Do you remember any other conversation than that of gentlemen rising from the bar?—No.

You mentioned the Lowther family as an instance?—He mentioned that as one; I do not recollect mentioning any one myself.

Did he tell you how long it was since any member of the Lowther family had been at the bar?—Yes he did, but I should not have mentioned it; I do not recollect when it was.

Do you happen to know that none of the Lowther family ever rose from the bar?—No, I do not.

Baron Gurney.—There was a grant of Edward the Third by which one of the Lowther family was appointed to the situation of attorney-general, and who, at the same time, had succeeded to an estate.

Mr. Cresswell.—And it was then the title arose, I believe.

Gurney, B.—There is a book containing the origin of all families that rose from the bar.

Sir J. Scarlett.—The Lowther peerage never rose from the bar.

Gurney, B.—I believe Lord Lowther was independent of that.

What did he tell you about the Lowther family rising from the bar?—I cannot tell you directly, without giving my reason for it.

You should answer my question first. What did he tell you upon the subject of the Lowther family rising from the bar?—I do not particularly recollect any conversation, but generally that the family had risen from the profession; that is all I recollect.

Do you remember anything else that he told you upon that subject, except that the Lowther family had risen from the bar?—And Justice Gould's family.

No: but about the Lowther family, was that all he said?—Yes: all that I recollect.

Digitized by Google

Digitized by Google

Digitized by Google

You dined with him again, after that?—Yes.

Was there a large party?—I dined with him both in a large party and with him alone.

He always asked you to drink wine with him, did he?—Yes, he recognized me ever after that.

Did he ask most of his guests to drink wine with him?—I cannot say.

How often have you dined with him?—Perhaps four or five times.

When last?—At Heysham, but I do not recollect the time. I think it was at Wright's house: upon that occasion, Wright invited me.

Were you often at Wright's house at Heysham?—Not oftener than twice or thrice.

In the summer-time?—I think both in the summer and the winter.

Did you always find Marsden there?—That I cannot remember. I had met him there.

How long ago is it since you had that conversation about Mr. Justice Gould and his daughter?—More than twenty years ago: it was in August.

Is there any other conversation you remember having had with Marsden?—Nothing that struck me as interesting.

Did that strike you as interesting?—Yes: it was new to me in both instances.

And therefore it would make a deep impression on you?—It certainly made an impression upon me.

Re-examined by the ATTORNEY-GENERAL.—Did he mention other instances besides those?—Yes, he did, but I do not recollect them.

There are some instances that most of us are showing?—Yes.

And some you can show?—Yes.

You were about to mention some circumstance about the Lowther family, which you were not allowed to state?—I was not aware that any of the Lowther family had been at the bar, at that time. I searched, and found his observation was correct.

Do you recollect whether he mentioned the Hotham family, likewise? Yes: I think that he said that Baron Hotham was at the bar when he was called to the bench, but that was when one of the family succeeded to the peerage. His brother succeeded to the peerage afterwards.

By GURNEY B.—He was Lord Hotham before he died?—Yes, when he was upon the bench.

The ATTORNEY-GENERAL.—He never knew it before he died.

Mr. CRESSWELL.—Do you know who were there when that conversation passed?—Wright was there. Some of the friends of the Rev. Mr. Clarkson, and two or three others I do not recollect.

Was Mr. Bleasdale there?—I think he was. I am inclined to think he was.

The *Rev Charles Hesketh* sworn.—Examined by Mr. WIGHTMAN.—

You are the brother of Mr. Hesketh Fleetwood, who was examined here to-day?—Yes, I am.

Did you know the late Mr. Marsden?—I did.

How long before his death did you know him?—The first year I recollect him, was in the year 1819.

Have you visited at Hornby Castle occasionally?—Yes.

Upon whose invitation did you go?—I cannot say; being a younger bro-

Digitized by Google

ther, the invitation did not come to myself. I went generally with my brother.

Have you, upon those occasions, been in company with Marsden?—Yes.

At dinner?—Yes: in the evening, and also in the morning.

Have you met Mr. Marsden at other gentlemen's houses, at dinner?—Not that I recollect.

What was his conduct and demeanour at the time you have been in company with him?—He was a very mild and polite gentleman.

Did he take part in the conversation?—Yes.

Have you, yourself, on different occasions, conversed with him?—Yes, I have. Once in particular.

From what you saw of Mr. Marsden, do you think he was capable of making a will, or not?—Quite capable.

Would you have made any difficulty in being a witness to it, if required? Not in the least.

Cross-examined by Mr. STARKIE.—The first time you saw him was in 1819?—Yes, that is the first time I recollect seeing him.

Were you in the habit of seeing him till his death?—No; the last time would be about 1823.

What age are you now?—I am thirty.

Had you any opportunity of seeing Mr. Marsden, except in company?—Yes, I recollect being with him alone.

When was that?—I cannot recollect, but I know that in one of my visits I walked with him. I think it was one of the last visits. The last time I saw him, perhaps.

Was that the only time you ever had an opportunity of seeing him by himself?—I do not recollect particularly. I have no doubt I have seen him in the house by himself.

The other time was when he was in company with many others?—I cannot say.

Were not the opportunities upon which you generally saw him, at dinner parties?—Yes, generally, and during the evening.

Do you know what the establishment was at Hornby Castle. What number of servants there were?—No, not at all.

I believe it was a considerable establishment?—Yes, for a country gentleman's establishment of the sort.

Were there servants waiting at table at dinner?—Yes, several; but whether they belonged to the house or to the guests, I do not know.

Had they his liveries on?—No—I do not know his livery.

You were frequently there?—Yes, several times.

Are you not able to say whether you saw the same servants there, at the different times you visited?—I did not notice them.

Did you count them, so as to see whether you missed the same set of servants waiting at table?—I cannot say whether they were or not.

However, the establishment was a considerable one?—Yes.

Did you see the maid-servants there, and whether they were the same servants you saw before?—Do you mean waiting?

No, serving in the house?—I have seen several in the house.

Pray, at the time you were there, were the Misses Wright there?—Yes: some of them.

How many were there of those young ladies?—I do not recollect; there were four Misses Wright altogether.

Digitized by Google

Digitized by Google

Digitized by Google

Were they in company with you, at any time at Hornby Castle?—Yes.

Dining at table?—Yes, they were.

They of course had an opportunity of seeing what Marsden's conduct was?—Yes, I suppose so.

Did you stay at any time in the house at Hornby?—I merely went casually to the Castle. I was once there the greatest part of the week. That was not the first time, but when it was I do not recollect.

Cannot you tell us whether it was soon after you first became acquainted in the house, or not?—No, I cannot tell what time I staid the longest.

During the time you did stay there, was there a considerable establishment in the house, of servants, men and women?—Yes, I saw some at table, and some otherwise employed in the house.

You were about fifteen, when you first went there?—Yes.

At that time would you have attested his will?—From what I saw of him.

Would you have attested his will, at the age of fifteen, upon your first acquaintance with him?—I should consider I was not competent to attest a will at that age.

In your judgment, was not Marsden rather a weak man?—Yes, he was a man rather below the ordinary race.

A simple-minded man?—He was a man not of strong mind.

Was he not a man of weak mind?—It depends upon what you call a weak mind.

What should you say upon that point?—I should say he was a man of rather a weak mind.

A timid man?—Yes, a shy man.

Re-examined by the ATTORNEY-GENERAL.—You say that once you had an opportunity of being alone with him?—Yes, one time particularly.

Had you any conversation with him?—We conversed about the improvements he was about to make, or had made at Hornby Castle.

Do you think that Marsden afforded a better opportunity in private or in public company to judge of his capacity?—In private, decidedly.

Do you think that any casual observer of him could form a just estimate of him in company, without knowing more of him?—I mean in company.

By GURNEY, B.—Were you, upon each of your visits, sleeping there?—Yes, my lord.

The ATTORNEY-GENERAL.—Mr. Wilson, the attorney, is here to prove a deed or two; perhaps my friend will hardly think it necessary to get out the deeds for that purpose, as they have been thrown into confusion; we have some deeds, as to which it was said that Mr. Wilson saw the execution of them.

SIR J. SCARLETT.—We stated yesterday that there was no occasion to call Mr. Wilson, nor to trouble him. One of the deeds was something about £100, due upon a share of a turnpike road; you mentioned it, and produced it.

The ATTORNEY-GENERAL.—We will call Mr. Wilson, in case there be any doubt about it, to prove the hand-writing of Mr. Baldwin.

SIR J. SCARLETT.—There is no occasion for calling him.

The ATTORNEY-GENERAL.—As he is here, we had better call him.

Mr. J. T. Wilson re-called. Examined by the ATTORNEY-GENERAL.—Did you know the hand-writing of Mr. William Bradshaw, of Aughton Hall?—Yes. I know his hand-writing; I was at school with him frequently.

Digitized by Google

Is that his hand-writing? (handing a document)—Yes; that is his hand-writing.

Do you know the hand-writing of John Dent?—Yes. I was his agent and receiver.

Is that his hand-writing (handing another)?—Yes. He was late of Temple Bar.

Do you know the hand-writing of Mr. James Fenton?—Yes. The recorder of Lancaster?

The recorder of Lancaster?—Yes. This is his hand-writing.

By GURNEY B.—Was he recorder of Lancaster?—Yes, for many years.

By Sir J. SCARLETT.—Was he the father of Mr. Cawthorne?—Yes.

By the ATTORNEY-GENERAL.—Is that Mr. Cawthorne's signature? (handing a letter)—Yes, the member for Lancaster.

Sir J. SCARLETT.—I shall object to that. He was examined as a witness in this cause at York, when tried upon the issue from chancery. My friend might have read his evidence, but he finds it much more convenient to read his letter than to read the evidence.

The ATTORNEY-GENERAL.—This is an act done. There is also a letter to him.

Do you know Mr. Marsden's hand-writing? (handing a letter)—I have seen his writing frequently, but never saw him write.

The ATTORNEY-GENERAL.—This is the copy of a letter from Mr. Cawthorne, from London, inclosing the inclosure bill.

Cross-examined by Sir JAMES SCARLETT.—You were at York on occasion of the trial there, were you not?—Yes.

Mr. Cawthorne was alive then?—Yes, he was; and he was examined, as I understood, but I was not in court during his examination. I saw him at the York assizes.

The ATTORNEY-GENERAL.—I do not propose to read those letters over again, as I have read them before. Mr. Baldwin's two letters are proved, and Mr. W. B. Bradshaw's.

Did you know the hand-writing of the father of the present Mr. Lister Marsden?—No, I did not know his writing.

The ATTORNEY-GENERAL.—This is a recognizance taken on the 14th June, 1786, before Mr. Fenton, the recorder of Lancaster. Here is a copy for your lordship (handing it up).

The clerk of the court then read the recognizance alluded to.*

John Waller sworn. Examined by Mr. TOMLINSON.—What age are you?—I am seventy-four.

Can you raise your voice a little, and speak to be heard by all those gentlemen. Are you an innkeeper at Giggleswick?—I was so. I live at Giggleswick.

Were you formerly in the service of the late Mr. Lister?—Yes.

The father of the present Mr. Marsden, formerly Lister?—Yes.

How many years were you in Lister's service?—Twenty-four.

When did you leave him?—I left him in 1796.

Did you know the late Mr. John Marsden?—Yes.

Was Mr. Lister in the habit of visiting him?—He was.

At Wennington Hall, I suppose?—Yes, chiefly.

And did Mr. Marsden use to visit your master?—Yes, at Belle Hill.

Had Mr. Lister parties to meet him, or to stop?—Yes.

* See Appendix.

Digitized by Google

Digitized by Google

Digitized by Google

Did the gentlemen of the neighbourhood come and dine with him?—Yes.

And had Marsden parties to meet Mr. Lister, when he was at Wennington Hall?—Yes.

By GURNEY, B.—Did you go with your master to Wennington Hall?—Yes, my lord, I did.

By Mr. TOMLINSON.—Did you ever see Mr. Marsden go out a-hunting? Yes.

Have you seen him walking about?—I have.

Had you an opportunity of seeing him frequently?—Yes.

By GURNEY, B.—There has been some mention of an accident he met with in hunting, by a fall; it has been mentioned, but I do not think it was proved. I know it was in evidence formerly, but not now.

Mr. ARMSTRONG.—Yes, my lord; and it has been said he never rode after. It has been stated, but not proved.

GURNEY, B.—I remember there being evidence upon it.

The ATTORNEY-GENERAL.—It came out in cross-examination at York.

Sir J. SCARLETT.—There has been no evidence given of it before your lordship. It does not appear, unless you have read the evidence at York.

GURNEY B.—Yes, I have a knowledge of both, and may perhaps be confounding the one with the other.

You have seen him hunt, have you?—Yes.

In company with Wright?—Yes.

What was Wright's manner towards Mr. Marsden?—Very civil and agreeable.

What was Mr. Marsden's manner generally?—Quite a gentleman apparently.

Did you see anything particular about his manner, different from others?—He was particularly short-sighted, and a little timid in other respects.

Was there any thing particular about his dress?—He was very neat.

Did he appear to be a person who knew what he was about?—Yes.

And capable of giving orders about his own affairs?—Yes.

Cross-examined by Sir J. SCARLETT.—Mr. Wright was always a very civil and agreeable man, was he?—Always, for any thing I ever saw to the contrary.

You must have remembered Wright, when first he came to Wennington Hall?—Nearly so.

You left Mr. Lister's in 1798?—Yes.

And you lived with him twenty-two years?—Yes.

You must have been there in 1784?—Yes.

Were you in the habit of going, from the first, to Wennington Hall?—Not for a few years.

Did you never go there, in the time of the late Mr. Henry Marsden?—No.

Do you remember him?—Yes; he once called upon us at Belle Hill. That was the only time I ever saw him.

He called once only, did he?—Yes.

Although you did not see him but that time, did you ever go to his house before he died?—No.

At Wennington Hall?—No, I never visited there till after he was dead.

How old are you now?—Seventy-four in July last.

But how soon after his death did you commence to visit there, do you remember?—I cannot speak to that—a few years.

Digitized by Google

When you first visited there, you found Wright there?—Yes.

You do not remember his coming there first?—No; he was come there before I visited there.

Did you know him before he went there?—No, I did not.

When you first went there, he was called Mr. Wright?—Yes; but it was before he was made steward.

You did visit there before he was made steward?—Yes.

What was he called then?—George Wright.

You remember his being called George Wright?—Yes.

Did he dine at the table when you first visited Wennington Hall?—I cannot recollect; I did not stop; I took the horses back, and fetched them again.

Did you ever see Mrs. Cookson?—Yes, many a time.

Did she come to visit you at Belle Hill?—She never came upon a visit; she might have called.

Did Wright come upon a visit?—Yes, and Miss Tatham has come.

But not Mrs. Cookson?—I cannot recollect her coming.

Do you remember when Mrs. Cookson died?—I cannot speak to that.

Do you recollect Marsden, on his visiting your master at his house?—Yes.

Did he stay long?—Perhaps a fortnight, or longer.

What was your occupation in the house?—I used to wait at table.

Did he play the fiddle in those days?—Yes.

A good deal?—He mostly brought it with him.

Did he play a good deal?—Yes, it was chiefly his amusement, playing the fiddle and walking out.

Did you ever walk out with him?—No, I never did.

Who used to walk out with him?—My master, or any company that happened to be in the house.

You never walked out with him?—No.

Did you ever see him a-hunting?—Yes.

He had hunters after he was at Hornby Castle, had he not?—Yes, I believe he had, but I do not know much of hunting.

You do not know much of that?—No.

Did you not visit at Hornby with your master?—Yes.

Did you stop there, or only go with the horses?—I stopped there when he was shooting or hunting.

Did your master go to Hornby to shoot, as well as hunt?—Yes.

Did Marsden hunt when he was at Hornby?—I have no doubt he did; but whether I was with him or not I do not recollect.

Do not you know that he did go out hunting himself, although you did not go out with him?—Yes.

At Hornby?—Yes..

Did that continue up to the time of your leaving your master?—I cannot speak to that.

Before you left your master in 1796?—Yes.

He went in 1793 to Hornby, during the year you used to go to Hornby with your master, in the hunting season. Did Marsden go a-hunting?—Yes.

Perhaps you may remember the horse he rode?—He rode a grey one, or a cropped mare.

What colour was she?—A dark bay.

She was called Daphne, was she not?—I do not remember her name.

A very quiet animal, was she?—A good mare.

Digitized by Google

Digitized by Google

Digitized by Google

Who was Mr. Marsden's groom that used to go with him; you must remember him?—Yes, but I cannot speak to his name.

Re-examined by the ATTORNEY-GENERAL.—You have known himgo out hunting, although you did not go with him; did you ever see him among the hounds?—Yes.

On horseback or on foot?—On foot.

By GURNEY, B.—In the kennel you mean?—Yes.

Richard Henry Roundell, Esq. sworn. Examined by Mr. MARTIN.—I believe you live at Gledstone, in Yorkshire?—Yes.

And are deputy lieutenant of the county, and a magistrate?—Yes.

Did you know the late Mr. Marsden?—Yes, slightly.

Where have you seen him?—When he was visiting at Gargrave, at Mr. Lister Marsden's.

Have you been with him in company?—Yes.

And have also seen him alone?—Yes.

Do you recollect, upon one occasion, meeting him when you had been hunting?—Yes: I believe the hounds had just killed a hare: I was riding, and he was walking.

Did he seem to take much pleasure in the sport?—He seemed considerably interested in the sport, and made various observations on the hounds; the hounds were collected round him.

Did he seem to be at all afraid of the hounds being about him?—Quite the contrary; much gratified.

Did he make any observation to you, as to his having formerly hunted, but had now ceased?—He did.

Did he say why he had ceased?—He said that it had been always a favourite amusement with him, but that, since an accident, he could not now ride; he took every opportunity of seeing the chase on foot.

From what you saw of Mr. Marsden on those occasions, did you conceive him quite competent to conduct himself as any other gentleman?—In what respect?

As to his conversation?—His conversation was that of any other person; I never conversed with him more than upon ordinary topics.

Did you see any thing to induce you to suppose he was not competent to make a will?—No.

Cross-examined by Sir J. SCARLETT.

At what date was this?—Between 1820 and 1822.

This happened about the chase?—Yes.

They were harriers?—Yes.

Whose harriers were they?—They were subscription harriers.

Did he subscribe?—No, they were not in his county.

Had you sufficient conversation with him, to enable you to ascertain whether he was a weak man or not?—It would be rather difficult; our conversation was not such as to induce me to suppose he was a brilliant man, but he showed no weakness that I could see. I can only say I had no conversation that led me to believe that he was at all imprudent in transacting ordinary business.

These words "ordinary business" are very vague?—I do not know how I can particularize generals.

Did you think him a weak man or not?—I did not think him a brilliant man, but I had no reason to think him very weak. He was rather more

Digitized by Google

weak than brilliant; but I can only judge from his observations, which were rather common-place. He showed no brilliancy.

There are many degrees between brilliancy and incompetency?—Yes.

Was he a weak man or otherwise?—Rather a weak man than otherwise.

Below the average?—Yes, he was below the average; he was rather below a clever man than a weak man.

James Clarke, Esq. sworn. Examined by the ATTORNEY-GENERAL.

I believe you are the recorder of Liverpool?—Yes.

And Attorney-General of the Isle of Man?—Yes.

Have you lived for some years, occasionally, in the neighbourhood?—Upwards of twenty years.

During any part of that time, have you known Mr. Marsden?—I should think my acquaintance with Marsden began upwards of twenty years ago, or about that time.

Then you must have known him twelve years before he died?—Yes, at least that.

You have met him in society?—Yes, frequently.

Have you ever been a visiter yourself at Hornby Castle?—Yes; I think six or seven times.

Did you ever stay there at night, or did you come away?—I came away.

Were you ever at Hornby Castle when there was company?—It was generally when there was company. I was once with the family, or with a private party. I have met him at Mr. Stout's, in Lancaster. That was my acquaintance with him.

Have you met him anywhere else?—Yes; I met him once shortly before his death; he was walking, and I was riding, three miles from Hornby.

Was there any body with him?—None whatever. That was a very short time before his death.

Have you yourself ever conversed with him?—Never, in any particular conversation. Generally, I sat next to him at table; that was after dinner.

What were his manners?—Extremely polished.

What was his disposition?—Extremely placid and benevolent.

Did you see enough of him, upon those occasions, to form any judgment as to his capacity, so as to make a will?—Nothing ever occurred in my presence that would lead me for a moment to doubt Marsden's capacity to make a will.

Did he take any share in the conversation that occurred at table?—He sat at his own table as other gentlemen would do, and took a share in the conversation as others would do; I do not recollect what it was.

Do you remember whether Marsden bore his part or not?—He was like any other gentleman. The impression upon my mind was, that he conducted himself like a gentleman, and was extremely polite and attentive to every one at table.

Would you have had any hesitation in attesting his will?—From my intercourse with Marsden, I have no doubt—I would have had no hesitation in attesting his will, if I had been asked.

Cross-examined by Sir JAMES SCARLETT.—How many times did you see him?—Nine or ten times was the outside.

Or eight or nine?—I am putting it within as limited a number as I can safely swear.

Sir JAMES SCARLETT.—I thought you had said eight or nine times.

Digitized by Google

Digitized by Google

Digitized by Google

Where did you see him last?—At Hornby Castle.

Were you married?—Yes.

You do not recollect the particulars of the conversation?—No.

Was he not very loyal?—I should say his politics were Mr. Pitt's politics.

You do not call that loyal, now?—Yes, I do.

What was the date of your first visit?—I cannot tell.

In consequence of visiting Mr. Stout, you had an annual invitation to Hornby Castle?—It was a long time after I had married.

After you saw him at Mr. Stout's?—A long time after.

You can remember that happy day?—Yes, I had no occasion to regret it.

How long is it since you met him at Mr. Stout's?—Nearly twenty years ago.

Had you any conversation as to politics?—No, certainly not.

What made you infer that he was a loyal man of that day?—From the general conversation at the table—that is the general impression of my mind; but as to general detail I cannot recollect.

Were there any compliments paid by him to Mrs. Clarke?—Yes.

What was it?—When we dined at Hornby Castle, where I took my family, he said, "I used to attend the balls at Lancaster, and I used to dance with Mrs. Clarke." She used to be there, and I found his memory was perfectly correct.

How did you know?—Because Mrs. Clarke said so.

That is not legal evidence. Mrs. Clarke is here, I suppose. I hope she is alive and well?—She is.

You need not tell us any facts she can swear to. Did you take any of your family there that day?—Yes, my wife and daughter.

And he was very courteous in his manner, was he?—Yes.

Occasionally he gave a toast, did he?—Yes.

Was it Church and King?—I do not recollect that.

What makes you speak as to his loyalty?—I only speak from general impressions.

Were there any elections going forward at that time?—Not that I am aware of.

Did he propose the health of any of the candidates?—He gave, "Mr. Cawthorne," and a little error occurred, which he corrected immediately.

What was it?—The error was, in drinking the health of Mr. Cawthorne, as member for Lancaster, during the time the Parliament was dissolved solved. He immediately corrected it.

Was there a canvass going on?—I cannot remember.

What time of the year was it?—I cannot recollect. Mr. Marsden was always a great adherent of Cawthorne's.

Did you sit next him at dinner?—No, never. He sat next to Wright. When dinner was over, Mrs. Wright withdrew from table, and Mr. Marsden came to her place.

Then it was that you were next to him?—Yes: then it was that I was next to him. That is my impression.

Was the conversation about politics?—I cannot remember at this distance of time.

Did you conceive him a weak man?—Nothing ever occurred, when I was present, to justify me in saying that Marsden was a weak man.

Digitized by Google

You can venture to say, that nothing ever occurred to justify you in saying he was a weak man?—Yes. There was certainly no impropriety in his manner that could make me draw any such conclusion.

You heard Mr. Cawthorne's evidence at York, did you?—I heard of his evidence, but I was not present. The impression upon my mind was, that he was of very kind and benevolent feelings, and very competent to act upon those feelings, and it must have been the feeling of every one.

You had no impression at all, as to his being a weak man, from any conversation you had with him?—Certainly not; I had no means whatever of measuring his capacity.

Mr Thomas Thompson, sworn. Examined by Mr. SERGEANT ATCHERLY.—I believe you are a solicitor in Lancaster?—I am.

Did you serve your articles to the late Mr. Baldwin, of Lancaster?—Yes.

And you were afterwards in partnership with him?—Yes.

ATTORNEY-GENERAL.—Is there any occasion to keep Mr. Lushington here?

Sir JAMES SCARLETT.—Not at all.

Did you know the late Mr. Marsden.—Yes, very well.

How many years is it since you became acquainted with him?—It is twenty-six years to the present time, since I first became acquainted with him.

Were you ever at Hornby Castle?—Yes.

Have you dined there?—Yes, often.

Have you had conversations with Marsden?—Frequently.

Were you ever present when he signed deeds?—I have seen him sign deeds.

Did your knowledge of him continue up to the time of his death?—Yes, up to the time of his death, or nearly so.

Now, Mr. Thompson, in your judgment was he competent to make a will?—Perfectly so.

Would you at all have had any difficulty in attesting his will?—None in the world. He was a person of disposing mind; no doubt whatever.

Cross-examined by Mr. CRESSWELL.—That is quite a legal phrase. "*A person being of sound disposing mind and memory.*"—It has been so.

I am not fond of changing old things, that have answered well; but I beg to ask you, where did you see him execute those deeds?—In the office.

Whose office?—At Hornby Castle.

What do you call the office at Hornby Castle?—You may call it an office, or counting-house, or the steward's place.

Mr. Wright's place?—Yes.

Did you go over with some deeds, on your own account?—No; I first went with Baldwin.

Was Baldwin his attorney at that time?—No, he was not.

When did you first know Marsden?—In 1808.

Then you went to Wright's room?—Not immediately.

Before the deeds were executed?—Of course; I went in before they were executed.

Was Wright in that room?—He was.

Do you know one George Smith, Wright's clerk?—Very well.

Was he in that room?—I think he was.

Did you ever see Marsden execute a deed, or any thing else, except in that room?—No.

Digitized by Google

Digitized by Google

Digitized by Google

Did you ever see him execute a deed, unless Wright or George Smith was present?—No.

By GURNEY, B.—Several deeds have you seen him execute?—Yes, my Lord. I have seen him execute several deeds.

By Mr. CRESSWELL.—None: except when Wright or Smith were present?—Not to my knowledge.

Did you ever converse with him as to matters of business?—No: but I have been frequently in his company.

Did you ever talk to him about the value of a farm, or hear him talking of the value of a farm, or rent that a tenant paid?—No: never.

Did you ever settle any account with him?—No.

Or see him settle any account?—No.

Thomas Inman, Esq., sworn. Examined by Mr. WIGHTMAN.—Mr. Inman, I believe you are a gentleman, residing at Lancaster?—Yes.

Were you acquainted with the late Mr. Marsden?—Yes: I was.

How long ago: is it since your acquaintance with him commenced?—I had been acquainted with him about thirty years.

Have you dined at Hornby Castle?—Yes.

Who were there at the time?—Mr. Tatham, of Melling; Mr. Cawthorne, and myself.

What was Marsden's behaviour to you and his other guests?—I saw nothing but that of a gentleman.

Do you recollect a discussion between Cawthorne and Tatham about some matter of date?—I do not recollect the subject; but there was one upon which they differed, as to the date of some public event that had passed: I believe there was; but I did not know the meaning of it.

Did Marsden interfere, or take any part in that discussion?—Yes: he did.

Tell us what it was?—He said he thought they were both wrong; as the event alluded to had taken place in some year which he named; but I do not recollect it: and, in consequence of which, they seemed to me to admit that he was perfectly correct; whereupon the conversation took entirely a different turn; and this statement of his, brought to their recollection some other events.

Cross-examined by Mr. STARKIE.—Did you ever dine at Hornby Castle, but on that occasion?—No: never.

What are you?—A gentleman, living at Lancaster.

Who invited you to go to Hornby Castle?—I wanted to see Wright, who was poorly. He wrote a note to me, and I went to see him. I saw Cawthorne, and told him I was going to see Wright.

How long was that ago?—Ten years ago, to the best of my recollection.

What that matter was they disputed about you have totally forgot?—I have forgot totally. I do not think I understood it at the time.

Who was right or wrong you do not know?—No: I do not.

John Nutter, sworn. Examined by Mr. TOMLINSON.—Were you formerly servant to the late Mr. Marsden?—I was.

How many years?—Seven.

Do you recollect what year you went to him?—In 1809, and I left in 1816.

Were you his valet or own personal servant?—I was.

Did you go with him when he paid visits? Yes.

Digitized by Google

Did he use to visit at Belle Hill or Gargrave?—Yes: in every year he visited both places; when the old gentleman was living at Belle Hill, and after his death at Gargrave.

How long did you use to stay at that time?—A fortnight at each place in general.

Were the gentlemen in the neighbourhood invited to meet him at Mr. Lister's?—Frequently.

Did Mr. Lister and his son return the visit to Hornby Castle?—Yes: they did so.

Did Mr. Marsden use to visit him with the gentlemen of his own neighbourhood?—He did.

Did you go out with him when he went out to dine?—Generally.

Did you often wait at table?—When I went with him, I frequently did so.

Did he entertain the gentlemen of the neighbourhood at Hornby Castle? He did.

Did you ever receive notes or letters directed to Mr. Marsden?—Yes.

To whom did you take them?—To Mr. Marsden.

Did you take back an answer?—I did.

From whom did you receive the answer?—From Mr. Marsden.

Were all the answers written by him?—I believe so.

Did you leave the notes with him?—Yes: I did.

When the answers were ready how did you know?—He rung the bell and gave them to me himself.

Was Mr. Wright always with him when that was done?—Not always.

What was Mr. Wright's behaviour to Mr. Marsden?—As a gentleman according to my opinion.

Was it respectful?—Quite so.

Was Mr. Wright rather strict with servants and work people, and people under him?—Yes: with those that would not do their duty he would be so; but he never interfered with me.

What was Mr. Marsden's own manner?—That of a gentleman.

What was his disposition?—Very good, as far as my judgment leads me.

Cross-examined by Mr. Armstrong.—You went in 1809?—Yes.

Who preceded you in Marsden's service?—Thomas Waller.

Had you known Marsden any length of time before you went into his service?—Some years.

Did you live near to Hornby?—No: I lived at Wennington Hall with the late Mr. Hesketh.

Was Thomas Waller his valet all that time?—Yes.

Is Waller alive now?—Yes.

Did you see him lately?—On Monday night.

Who hired you?—Mr. Wright.

Were your wages raised after you had been there some time?—There was a little rise.

Who raised them?—Mr. Wright.

Who succeeded you: do you remember?—William Whittam.

Did you attend Mr. Marsden in his bed-room, taking to him his shaving water, or any thing he wanted?—Always.

You always attended his bells when he rang for you?—Always, when I was in, or not engaged in something else.

If you were engaged in any thing else would you leave that to answer Mr. Marsden's bell?—Yes.

Digitized by Google

Digitized by Google

Digitized by Google

Do you know Robert Cornthwaite?—Yes.

Was he in Marsden's service at the time you were there?—He was.

Do not you remember assisting him upon one occasion to put the side-board in order, and you desired him to go and tell Marsden to give over ringing?—No: never.

That never happened?—No: never.

You never said that to Cornthwaite?—No: I do not recollect ever saying any such thing.

You are quite certain you never said to Cornthwaite, go and tell Marsden to cease ringing the bell; and never, yourself, refused to go?—Never.

You were always civil to Marsden?—Yes.

And always spoke respectfully of him whether present or absent?—Yes.

You never called him an old fool?—Never in my life.

Do you know Richardson, the gamekeeper, at Hornby Castle?—Yes.

Did you ever, in his presence, call Marsden a fool?—Never.

Or say before any body that he was a fool?—Never to my knowledge.

Might you say so, or not?—I am positive I never said so.

And you never thought so?—I am not going to say what I thought.

(This excited some laughter in the court, and called forth the notice of the judge.)

GURNEY, B.—I will not have this court made a scene of disturbance, and therefore if there be any symptoms of it renewed, I will clear it.

You never called him a fool, but whether you thought him one or not you will not tell me, I will trouble you to tell me?—One may have thought many years ago what one cannot recollect now, having had no reason to do so.

How did it get into your thoughts?—I never said it did.

GURNEY, B.—What does he say?

Mr. ARMSTRONG.—My lord he declined giving his opinion in the first instance, then he said he had no reason for forming that opinion, and now he states, "I do not know that ever it did get in."

What did you think about Marsden?—I did not consider him as the brightest of men.

Did you think him ignorant and weak?—A little weak.

Very weak, or far beyond the general average of men?—I do not know what the general average of men is; I cannot say, but he perhaps might be so.

By GURNEY, B.—Do you think he was weaker than men in general are, that is the meaning of it?—He was not so strong upon some points, no doubt; he was not the brightest of men.

Did you think him weaker than men in general?—Upon some points.

By Mr. ARMSTRONG.—What were the points that he exhibited of weakness?—In settling accounts or so.

What induced you to think he was short upon that point?—I cannot speak to that.

Tell us the truth of your real opinion?—I tell you it as far as I know.

What was his failing point in regard to accounts?—Yes, he used to ring the bell, and say, "there the money was for me."

And that induced you to think him weak, did it?—No.

What was it then that induced you to think him weaker upon some points than others; you seemed to have formed an opinion that he failed in some

Digitized by Google

points, and was below the general run of mankind—tell us what were those points upon which he failed?—I do not know that I can state upon what points he failed.

You say you were frequently in his bed-room; did you ever see a checked apron there?—Never in my life.

Nor ever saw Marsden with one?—Never.

Nor take any particular notice of a checked apron?—I cannot say that I ever did.

Try to recollect?—I never had any reason.

Did not you and all the rest of the servants laugh at Mr. Marsden's fondness for a checked apron?—We joked about it but I never saw it exemplified.

There were jokes about it amongst the girls?—Yes, amongst the girls and me; we talked it over.

Did you know a person of the name of James Marshall, at the Castle Inn, at Hornby?—No, I did not know him.

Did you remember being at Belle Hill with Marsden, and his offering to pay some post boy a quantity of money?—He used to give me the money to settle with the post boy, but that never happened that I know of.

That is not a thing you could have forgot?—It is impossible, as it never happened.

How happened it that he gave you the money to pay the post boys; was not that one of the points he was short upon, that he could not pay?—He could have paid accounts with me.

But you durst not trust him with a post boy?—I had nothing to do with it; if he paid them himself, I should not interfere with them; but he gave me the money, and I paid them; he always said, "there is the money, and give the post boy so much."

In what way did he settle with you?—I left the bill with him, and then he rang the bell and said, "there is the money for the bill you left."

That is the account you spoke of?—Yes.

How long might it be before he rang the bell?—I cannot speak to five minutes.

Can you speak to five days? How often did you deliver any bills to him? Two or three times in the year perhaps.

What were these bills for?—For what I had bought for him; any thing that he wanted.

That was settled by Wright?—Yes.

For any thing you had laid out for him?—Yes, perhaps he would say, "John, make out your accounts and I will settle with you."

What may be the amount of his personal expenditure?—A trifle.

How much?—Very often under a pound.

And not more than two or three times a year?—I cannot say it was more.

Was it under ten shillings?—I cannot speak to that. It has been more than that.

It has been less?—I cannot say.

Did you buy resin for him for his fiddle?—I cannot say what it was for now.

What did you lay out his money upon?—Perhaps he might want writing paper, or such things.

Or resin for his fiddle?—I do not recollect ever buying resin.

Digitized by Google

Digitized by Google

Digitized by Google

Will you undertake to say that the account was always settled the day you called for it?—I will not speak to that at all.

It might be one, two, or three days?—I think it was very soon after I delivered the bill.

How much time elapsed?—One night or a day.

He would always have a receipt would he?—Yes.

He was particular about that?—Yes, he said, "John, give me a receipt for that;" and I always did.

Did you sign the receipt at the foot of the bill you had given in?—Of course.

And he kept it?—Yes, he did.

Did you go to Gargrave with Marsden when he went?—Always when he went.

Do you recollect speaking of the treatment Marsden had received at Gargrave, when he returned to Hornby Castle, of any sort?—I cannot say.

Did you ever say that he had been the butt or ridicule of Mrs. Lister, her sister, or any of the family there?—Never; he was treated with the greatest kindness.

He very likely might; but I ask you, whether you ever said so?—No, I never did.

And, of course, you never said that you would not go with him there again on that account?—Never.

How came you to leave his service?—I gave him three months' notice. I was about to get married.

Whom did you give notice to?—To Wright.

Not to Marsden?—No, to Wright.

Do you know Mrs. Anderson; was there a person of the name of Anderson in the service at Hornby Castle when you were there?—I do not recollect.

Margaret Anderson; was there a servant of that name there?—I do not recollect any one of that name.

Do you remember Mr. Marsden keeping Wright waiting, when he was going out to dinner?—I do not recollect.

Do you recollect Wright going up stairs for him, and bringing him out of the room?—I do not.

You would have recollected that, if it had happened, would you?—Yes, I think so.

And particularly, if Wright had a whip in his hand?—No, never.

Did you not say to Margaret, one of the servants, that it was a great shame that Mr. Wright should use our master so, and that you would have shewn him the difference, if you were in his situation?—Never.

Then it could not have happened?—No, it never happened.

Did you ever complain to any of the servants that Marsden was ill-used by Wright?—No, never.

Never to any one?—Never.

Do you recollect, upon one occasion, Marsden having an inflammation in his eyes?—No, I do not recollect.

Do you recollect any occasion, when a poultice was necessary to be applied to his eyes?—No, never.

And you were obliged to call Wright to him, to make him have it?—Never.

Could you always manage Marsden yourself?—He was very good to manage.

Digitized by Google

You never had to threaten you would tell Mr. Wright?—No never.

And you never said, that if you named Wright, it would quiet him at once?—Never.

You never said that, if he did not give over ringing, you would tell Wright?—Never.

By the ATTORNEY-GENERAL.—You left nineteen years ago?—Yes, last April.

Mr. William Robinson, sworn. Examined by Mr. MARTIN.—I believe you are an attorney at settle?—I am.

Did you know Mr. Marsden?—Yes, a little.

Had you ever dined with him?—Only once or twice. He has been at my house, and took luncheon on his way to Gargrave.

At your house at Settle?—Yes.

Did you see much of him?—Very little.

From what you saw of him, would you consider him as one capable of transacting the ordinary affairs of life?—Yes.

Did you consider him competent to make a will?—Yes.

From what you saw of him, should you have made one for him?—I should, certainly, have made one for him, if he had given me instructions for it, or have attested one, if required.

By the ATTORNEY-GENERAL.—Are you an attesting witness to that deed—(handing a deed to the witness.)—Here are the two mortgages to Mr. Yorke, the one for £10,000, and the other £5,000, dated the 19th of February, 1805?—Yes: I am.

Were you Mr. Yorke's attorney in that transaction?—Yes.

Cross-examined by Sir JAMES SCARLETT.—Mr. Yorke was the brother of Mrs. Lister?—Yes.

Are you his attorney?—Not in this suit.

Was there any relationship between him and you?—A family connexion between him and me, by marriage.

Were you consulted in the purchase of Wennington Hall?—No: that was before I knew Mr. Marsden.

Then you saw Marsden but very little, you say?—Very little: I was clerk to Mr. Bleasdale. I think he was invited to dinner, at Melling, at Mr. Bell's. I went with Bleasdale, whose guest I was.

When was that?—In 1811.

Had you any conversation with Marsden?—Not particularly, at Bleasdale's.

Did you hear him converse much with other people?—No: not much.

Had you any opportunity of knowing his state of intellect?—No: or very few opportunities. I saw nothing but what was perfectly rational.

Do you think you had sufficient means to form a competent judgment of his intellect?—I thought him a rational man. I saw very little of him.

I was going to put it, that, as you saw nothing of him to make you think him irrational, what was it that could make you think him perfectly rational?—I saw nothing irrational.

Did you see enough to make you think him a rational man?—Yes: but I should say he was rather a trifling man. He was very punctilious about little compliments, or sent them to you; stating them with a minuteness that struck me as being singular. He took luncheon on his way to Gargrave; and he said that Mr. and Mrs. Lister had sent their compliments to

Digitized by Google

Digitized by Google

Digitized by Google

me. I said, I suppose it was Mr. and Mrs. Wright, and he said, "no: it was Mr. and Mrs. Lister," and not by them; and then he said, "shall I give your compliments to Mr. and Mrs. Lister." This appeared to me rather trifling.

Do you remember any thing else that day?—Not as trifling. He was merely taking a luncheon on his way, so that very little passed. When he rose to depart, I pressed him to remain; and he said, "no: it is time, I must depart, the carriage is ready."

On what other occasion did you see him?—When he executed these deeds.

Where?—At Hornby Castle.

In whose presence?—In the presence of Wright and myself, in the room where business was ordinarily transacted. A number of papers were there.

Was that Wright's office?—I understood it to be either Wrigh'ts office, or Marsden's morning-room. It was a sort of study.

Or a sort of counting-house?—Yes.

Was George Smith there?—I do not know him. Wright came along with me to Lancaster, to pay the money. It was paid partly to Wildman and partly to Yeats. It was a transfer of two former mortgages; the one was for £5,000 to the executors of Wildman, and the other was for £10,000, paid to the former mortgagees, who had joined in the transfer.

And then you came away when the deed was executed?—Yes.

Was that the second time you saw him?—No; that was the last time. I think I only saw him on three occasions.

The first was in 1811?—Yes.

You do not remember any conversation then, at all?—No, I do not, indeed,

The Rev. William Carr, sworn. Examined by the ATTORNEY-GENERAL. I believe you reside at Bolton Abbey?—Yes.

Have you ever seen Mr. Marsden of Hornby Castle?—Yes, two or three times.

Do you remember meeting him in 1809?—In 1809 or 1810; I think it was in 1810.

Was that at Gargrave?—Yes.

Do you remember at that time Mr. Marsden's family being increased?—Yes, I was there a few weeks after the birth of Miss Marsden.

Then Lister?—Yes.

That was the eldest daughter?—Yes.

That was some weeks after her confinement?—Yes.

Do you remember his proposing a toast after dinner?—Yes, very well.

What was it?—He begged to propose a toast, after Mrs. Marsden had retired to the drawing-room. Mr. Lister Marsden gave him leave to propose the toast, and which was—"Mrs. Lister's better health, and that the next child may be a son and heir."

Did he appear to you to have an anxiety about her having a son?—Yes, he seemed anxious about it.

How long did you stay then at Gargrave?—I do not recollect whether I went away that night or staid till the next morning.

Digitized by Google

Have you seen Marsden on other occasions?—Never, but two or three times.

Did you see enough of him to enable you to form a judgment whether he could make, or give instructions to make a will?—He never showed any weakness at all in my presence. He gave a very appropriate toast.

On what terms was he received at that house?—In great friendship.

Did you then know that he was a relative?—Yes; I knew that.

ATTORNEY-GENERAL.—I will now put in some depositions; no, I shall first call Mr. Birkbeck.

William Birkbeck, Esq., a Quaker, on his affirmation. Examined by the ATTORNEY-GENERAL.—Are you a banker, at Settle?—I am.

Did you know the late Mr. Marsden, of Hornby Castle?—I did.

For how many years before his death?—I should think for twenty years, at least, before his death.

Had you any opportunities of seeing him?—I saw him frequently.

Did you ever see him at the house of Mr. Lister, of Belle Hill, at Giggleswick?—Yes; I dined with him there.

Do you know whether it was his habit of going there and staying occasionally upon a visit?—I saw him year after year, I do not know how often.

Have you seen him at other gentlemen's houses, in the neighbourhood? Yes; I have.

When he was there, did he visit among the neighbouring gentry?—He visited among those in our neighbourhood that Mr. Lister was in the habit of visiting.

Among other houses, did you ever meet him at your father's?—I did.

Has he ever dined at your own house?—Yes; he has.

Often or seldom?—I do not know how often, but frequently.

About what time was he in the habit of staying in that neighbourhood? I cannot recollect: I should think from three weeks to a month, at a time.

Have you ever met him anywhere else?—I met him at the house of the late Mr. Swale, of Settle. It is so long since, that I cannot say exactly the whole of those I saw him visit.

On these occasions, have you yourself had personal intercourse with him, and conversed with him?—The same intercourse that one gentleman has had with another, at dinner; but I have met him in his walks occasionally, when I conversed with him alone.

More than once or twice?—I should think more than once.

Have you seen enough of him to be able to form an opinion of his capacity?—I should think I have.

What were his manners, as a gentleman?—He was very gentlemanly in his manners.

More or less punctilious than others usually are?—I should think him more punctilious than generally is the case at this time of day.

What were his manners and character as to kindness, or want of it?—I never had any opportunity of judging of that.

What was his temper, as to mildness or benevolence?—I never saw any appearance of ill temper about him. I should suppose he was a good tempered man.

In your opinion, was he competent to conduct his affairs with the usual assistance that gentlemen of property have?—I should think he was.

Digitized by Google

Digitized by Google

Digitized by Google

On what terms did he live with the Listers?—I believe he was on friendly and intimate terms.

Did you know they were relations of his?—I did.

Did Marsden appear to you to understand his situation in society?—I should conceive that he had a very full idea of his situation in society, to consider himself a gentleman by birth.

Have you heard him converse upon the passing politics of the day?—I have.

Did he join in conversation as other gentlemen did?—He did.

I believe you did not agree with him in politics?—I did not.

I beg to ask you whether, before strangers, he was more or less communicative than if they were not present?—From the opportunities I had of judging, I should think that he was freer and more communicative in conversation with a single person than in a mixed company. That is not always the case; some people are very lively among twelve, when very much otherwise at a tete-a-tete.

Sir J. Scarlett.—That is not often the case.

In your opinion, was he competent to make a will?—Quite competent, in my opinion.

Have you any doubt of it?—Not the slightest doubt.

Would you have had any hesitation whatever in attesting a will made by him?—Not the least.

Cross-examined by Sir J. Scarlett.—I believe you also know Mr. Wright?—I do.

How many years have you known him?—Not more than eight or ten years, but I cannot recollect exactly.

Eight or ten years from this time?—Yes.

Mr. Wright has an account with you, has he not?—Yes.

As a banker?—Yes.

Had Marsden any account with you?—No, he never had.

Did you think him competent to keep a banker's account?—Quite competent.

Did you ever settle any account with him?—Never.

Or see him settle any account?—Never.

Or whether he was master of the common rules of arithmetic?—Never: I was not in the habit of trying.

I do not ask that; bnt did you know?—No; I did not know.

Did you think he was a clever man?—By no means.

Did you think him a weak man?—Not distinctly a weak man; but probably I may say this, that his mind might be stronger than I held it, but as he had not education it was not developed as it might otherwise have been.

Was he of strong or weak intellect?—He was not a man of strong intellect.

Was he a weak man?—He was not weak, certainly, compared with some men, but he might be reckoned so as to be compared with others.

Have you any friends weaker than him?—Yes.

That you hold political discussions with?—I do not know that I hold political discussions with them, but I have friends I should call weaker than him.

You differed from him in politics?—Yes.

Did you endeavour to convince him?—I should not have been so foolish as to attempt it, as it is difficult to convince any one.

Digitized by Google

Is it not usual to differ upon politics?—Far more then than now. I argued with him as with any one else, knowing as little about it as he did, or less.

Your arguments failed to make an impression upon him?—I believe they did; his failed to make any impression on me, and therefore we succeeded equally.

Can you state any argument in particular that you had with him?—My memory does not serve me to do so.

He was for church and king?—He was a Pittite, and I was a Foxite. I do not think that has anything to do with the case of Tatham and Wright; but if his lordship says it has, I will explain it more satisfactorily. He was a Pittite, and I was a Foxite—he was for church and king, if you please.

Did you talk about Pitt at that time?—Yes.

Some ten or fourteen years ago?—This, I said, was twenty or thirty years ago. I believe I said upwards of twenty years, but I am unfortunate in not recollecting dates.

As you saw him so often, and formed so good an opinion of him, can you tell us any subject you ever discussed with him?—No, no particular subject; but from the conversation I had with him, the impression on my mind was that which I have stated, although I do not remember the conversation particularly.

Was he childish?—I should not consider him so.

Was his conversation trifling?—It was so; but I have seen many gentlemen grown up whose conversation was trifling.

You are always making comparisons. Was his conversation trifling?—I am not a scientific man; I should not say it was more trifling than other gentlemen.

Not more trifling than the general conversation you hear?—I do not think it was.

I understand you to say, Mr. Birkbeck, that his conversation was not more trifling than gentlemen in general?—Certainly not. The conversation of the majority of gentlemen might have been less trifling upon some occasions, but they might be different upon others.

Generally speaking, taking the average of mankind, whose conversation is not trifling?—I cannot exactly give you an answer to convey what I mean; but it is, that his conversation, generally speaking, was that of the conversation of gentlemen at table.

Then, generally speaking, from the conversation of gentlemen, you cannot distinguish the faculties of one gentleman from another?—I am quite sure, Sir James, I might be in company with a gentleman from day to day, and might not be able to put a question so as to discover skill or intellect so as to state my opinion of him before you or any other, but I saw enough of Marsden to think he was quite competent to do what I said he was.

This question is to be determined by the opinion of a jury; I cannot take your opinion upon trust; I must ascertain the reason why you form it. You have stated your opinion deduced from no conversation upon morals, science, or religion?—I had no conversation with him upon any of those subjects.

Not upon any of those subjects?—No.

But you did not think him a weak nor trifling man?—I said that the majority of those with whom I was acquainted were less trifling than he was.

Meaning from that, he was less trifling than those you conversed with?—No; he was not guilty of any great folly. I think, Sir James, you make rather too many observations for me to answer.

Digitized by Google

Digitized by Google

Digitized by Google

Did you think he was trifling or not?—I think he was trifling; and I was so, I dare say, occasionally.

I did not ask you if *you* were trifling—was *he* trifling in conversation?—I should say not particularly so.

Do you know of his ever conversing upon any other matter than common-place topics?—I never did; at least I cannot recollect.

You walked with him sometimes when you met him in the road?—Yes.

How long together?—Never more than half an hour in the day, as a relaxation from business.

More than once?—It is more than twenty years ago.

I care not whether it were twenty, forty, or a hundred years; you walked with him for half an hour you say?—Yes.

Had you in that time any conversation so as to ascertain the state of his mind?—As to his acquirements, I might not; but as far as regarded his mind as to transacting the common business of life, I thought he was competent.

Did you ever know why he did not keep a banker's account himself?—I never did. I do not know if he did or did not, then. He was at a considerable distance from me.

How lately before his death did you see him?—I think about a year before his death was the last time I saw him. He was then walking down to call upon Mr. Robinson, who lived near Settle.

That is the gentleman that has been examined?—Yes.

You are quite sure he went?—He told me he was going, but I cannot say as to his entering the house.

Re-examined by the ATTORNEY-GENERAL.—Was his intellect sound as far as it went?—I considered it perfectly so.

From all that passed in your presence, was he incompetent to make a will?—Not in the least; not a circumstance ever occurred that led me to think so.

From what you saw of him did you think you had the means of forming an opinion?—Yes; I thought so.

Mr Alexander Fraser sworn. (Examined by Mr. Sergeant ATCHERLY.)—You, I believe, reside in London?—Yes, sir.

And you follow the profession of a short-hand writer?—Yes.

Were you engaged to take notes of the proceedings on the trial of Wright *v.* Tatham, at York spring assizes of 1830?—Yes, I was.

Did you accordingly attend, and take full or verbatim notes of the whole proceedings on that occasion?—Yes, I did, of the whole six days' proceedings.

Have you your original notes in Court?—Yes; I have the original notes of both the former trials in Court.

Did you, amongst other witnesses, take notes of the evidence of a witness named Roger Chester?—Yes, I did.

Have you examined that transcript of his examination, (handing it) with your original notes?—Yes, I have, and have marked it accordingly.

Have the goodness to read the evidence of Roger Chester, who has since died?—Yes.

Mr. Fraser accordingly read the evidence alluded to, as follows:—

Roger Chester sworn,—Examined by Mr. WIGHTMAN.

Were you Mr. Marsden's servant, at Hornby Castle?—Yes.

Digitized by Google

When did you go into his service?—In 1819.

And during that time, you had constant opportunities of seeing him?—Yes.

What was his manner—kind or otherwise?—Yes; very kind indeed.

Did the neighbouring gentlemen visit at Hornby Castle?—Yes.

Have you seen Mr. Robert Bradshaw, of Halton Hall, there?—Yes.

The late Rev. James Stainbank?—Yes.

Have you seen Mr. Greene Bradley?—Yes.

Mr. Cawthorne?—Yes.

Have you seen Mr. Greene, the member?—Yes.

Have you seen the late Mr. Robert Hesketh?—Yes.

Mr. Peter Hesketh?—Yes.

Have you seen the Rev. Mr. Procter, of Hornby, there?—Yes.

And the Rev. Mr. Tatham?—Yes.

Who usually sat at the head of the table, at dinner?—Mr. Wright.

Who, at the bottom?—Mrs. Wright.

GURNEY, B.—This is proved by many witnesses.

Sir J. SCARLETT.—There is no altercation about it.

Have you received, as his servant, notes directed to him?—Yes.

Letters?—Yes.

Have you taken them to Mr. Marsden direct, and given them to him?—Yes.

Have you received from him notes and letters to deliver?—Yes.

Have you ever seen him write?—Yes.

Did you ever see any one assist him in his writing, or in his letters or notes?—No.

Have you travelled with Mr. Marsden?—I have.

Did you pay the post-boy?—Yes; I did.

Who gave you the money?—Mr. Marsden.

Did you use to pay the expenses on the road?—Yes.

Did he give you the money for that?—Yes.

Did you use to give him an account of the expenses?—Yes.

Did he look it over?—Yes.

And then he paid you the money?—Yes.

Did you advance the money, or did he give you it before hand?—I received the money afterwards.

Did he go to Gargrave frequently?—Every year.

Did he appear to be on terms of great intimacy and friendship there?—Yes; very much so.

Do you remember bringing him a card when at Gargrave?—Yes.

From whom was it?—From Admiral Tatham. I received it of his coachman.

Did you offer it to him?—He said, "who is it from."

What did he say?—"Take it away," says he, "don't bring his cards here," with great indignation.

Did you ever see Mr. Wright exercise great control over him?—No.

Cross-examined by the ATTORNEY-GENERAL.—(Sir James Scarlett.)

In your judgment, he semed to lose his temper upon the mention of the Admiral?—Completely so.

Have you ever known it in any instances besides the one you mention?—None.

Digitized by Google

Digitized by Google

Digitized by Google

Did you remain with Mr. Marsden till his death?—Yes; I did.

Did you find any alteration in any way, as to his manner and general conduct, from the time you entered his service till his death?—None.

Do you live with Mr. Wright now?—I do.

Ever since the death of Mr. Marsden?—Yes.

In what situation are you in the service of Mr. Wright?—I am his butler.

When you went to live with Mr. Marsden, who hired you?—Mr. Wright.

What were your wages?—Twenty-six guineas a-year at first.

Were they raised?—Yes.

How soon?—Perhaps in four years time.

Were not the terms agreed upon by Mr. Wright and you?—Yes; I spoke to Mr. Marsden first. I was hired by Mr. Wright, and the terms agreed upon by Mr. Wright.

Were the terms raised four guineas—was that upon speaking to Wright?—Yes.

What are your wages now?—thirty guineas.

During the time that you lived with Mr. Marsden had you any reason to observe anything particular in his manner?—nothing.

Nothing different from Mr. Wright or any ordinary person you may have seen?—I could not see any difference.

What did you see? speak up.—I did not see any difference.

Between him and Wright, for instance, or any gentleman you might see—any neighbour?—I did not see any difference.

From first to last?—Yes.

Did you ever join in any jokes that passed in the kitchen, or servant's hall, about Mr. Marsden?—Perhaps I might.

If you never saw any thing different from Mr. Wright or any other gentleman, how came you to join in jokes about Mr. Marsden?—Perhaps, I may join in jokes about any one.

Have you heard any jokes about Mr. Marsden?—I cannot say; but perhaps I may.

Do you remember at a particular time—let me refresh your recollection—having taken lunch up to your master, Mr. Marsden, and coming down into the servant's hall?—No; I do not.

Do not you remember so far?—No.

Do you remember shortly after you had come down, Mr. Marsden's bell being rung?—I do not.

Upon that bell being rung, do you remember saying "what does the d—d fool want?—No; I do not.

Do you remember saying "you old fool, I am not coming yet?"—I did not.

Will you swear that you did not say that, nor any thing of that kind?—I did not.

You do not remember the bell ringing again?—No.

Then speak out. I wish to know whether you ever said among the servants, and on the same occasion, (as I say) upon the bell ringing again, "I know what the fool wants, his basin is too big?"—I never said that.

Nor any thing of that kind?—I did not.

Upon your oath, did not the bell ring a third time, and upon that, did you not say "do you hear that d—d fool; now I shall be like to go?"—I did not.

Nor any thing of that kind?—No; I did not.

Digitized by Google

What say you to that?—I say I did not, nor any thing of that sort.

Did you go up?—I always went when the bell rang.

Did you ever go when you found the basin too big?—I remember nothing about the basin whatever.

Do you ever remember an instance of his wishing you to get change for a note?—I do.

Upon your oath, has not Mr. Marsden given you a pound note, and desired you to get two sovereigns for it?—No.

Have you never said so?—No; never.

Now to all this conversation, I wish to refresh your memory, by asking whether you remember a man of the name of Crosfield?—Yes.

You never said any thing of that sort to him, nor in his presence?—No; I did not.

Upon a note being given to you, and on being desired by Marsden to get two sovereigns for it, you did not reply, "I could get two half sovereigns for it," and he said, "that will do, that will do?"—Nothing of the sort.

Do you know a woman of the name of Jane Jennings?—I do.

Was Crosfield the gamekeeper?—Yes.

Jane Jennings was a servant also?—Yes.

Did you ever say to that woman, Jane Jennings, that Mr. Marsden was childish?—No.

Did you never say to her, that Marsden should declare he was master of his own house?—I do not recollect it.

Did you not say, that nothing would please you so much, or more, than that Marsden should declare that he was master of his own house?—I do not recollect.

You know the woman Jennings?—Yes.

Will you swear you did not say so to her?—I do not recollect it.

Will you swear you did not say it?—Yes.

Did you never say to that woman, Jennings, that when notes were brought to Mr. Marsden, he did not dare to send answers till he had taken them to Wright to be looked over?—No; never.

Did you not say, that you yourself durst not take answers to notes till you had taken them to Mr. Wright?—Never.

Who did you succeed?—William Whittam.

How long had Whittam been in the service?—About three years.

When did he die?—I think he died last year; I think it was in August last year.

Whose service had you been in, before Mr. Wright hired you?—One Mr. Moore, of Bolton-in-the-Moors.

Do you remember who recommended you to Mr. Wright?—I do.

Who was it?—John Whalley.

GURNEY, B.—Were you present when you were recommended?—No.

By the ATTORNEY-GENERAL.—What was John Whalley?—He was a farmer, at one of the farms, near Hornby Castle.

Is he there now?—No; he is not.

Where is he now?—He lives at Cantsfield, three or four miles from Hornby.

And you saw no difference in the manner of Mr. Marsden, in any respect?—No.

No fear of dogs?—Yes; I believe he was frightened at dogs.

Digitized by Google

Digitized by Google

Digitized by Google

Was he afraid of any thing else?—No.

Turkey cocks?—No.

How do you know he was afraid of a dog?—I had very great many reasons, I believe; he was bit by a dog once, and we had a savage kind of a dog belonging to the house.

Did you ever see him afraid of a dog in Hornby street?—No.

Have you ever waited with him?—No; I never did.

Had you any ganders about?—Yes.

Did you ever know him shew any fear of a gander?—No.

How long had you known him to be afraid of a dog?—Ever since I came to the place.

That was perfectly well known?—Yes; it was.

Was it a dog that was fastened up?—No; it was not.

How came the dog to be left there, if the master was afraid of him?—I cannot say.

Was it a game dog?—No; a large terrier dog: a very savage dog.

Did he ever tell you he was afraid of it?—Yes.

That terrier dog?—Yes.

Did he ever tell you to destroy him?—No; he never did.

Have you seen him terrified at the dog?—Yes; I have.

Was it that he would not pass him, or stay in the house, or call upon people to call him away; how did he signify his fear—was it by desiring you to call the dog away?—It was.

When he had to pass from one part to another?—Yes, I only saw it once; he desired me to take the dog away.

Where was he at that time?—He was walking in front of the Castle.

And the dog was lying down, was he?—Yes.

Did he call to you?—He did.

And desired you to call the dog off?—Yes.

And did you?—I did.

Where did you take him?—I took the dog into the back yard.

Did the dog follow you immediately on calling him?—Yes; he did.

And then Mr. Marsden passed by?—He was past the dog.

That is the only time you ever saw this?—Yes.

Has he told you at other times that he was afraid of him?—Yes.

When was that?—Three or four years before his death.

Re-examined by Mr. Pollock.—He was walking backwards and forwards in front of the Castle?—Yes.

And did he go on walking backwards and forwards?—Yes.

And that is the only instance you know?—Yes.

And all the rest is mere hearsay?—Yes.

Who was the servant that brought you the card?—John Gregory.

Did you know John Gregory?—Yes.

Do you know whether John Gregory is dead or not?—He is dead.

Mr. Fraser, cross-examined by Mr. Cresswell.—I think you stated that you took short-hand notes of the whole of the proceedings on the trial at York?—Yes, Sir, I did; and also of the proceedings on the trial of the ejectment between the same parties, which took place at Lancaster, in the spring assizes of 1833.

Did you, upon occasion of the trial at York, take notes of the evidence of Mr. Cawthorne, who is also since dead?—Yes; I did so.

Re-examined by Mr. Sergeant Atcherley—Did you also take notes of the examination of John Langshaw, at the trial at York?—Yes; I did.

Digitized by Google

Have you a verified transcript of it?—Yes.

Mr. Fraser then read the evidence alluded to as follows—

Mr. John Langshaw, sworn. Examined by Mr. Sergeant JONES—You are a professor of music and organist? I am.—Where at? At Lancaster.—Did you know the late Mr. Marsden of Hornby Castle? Yes.—Were you at school with him? Yes.—At Lancaster school? Yes.—Were you in the habit of going occasionally to Hornby Castle? Yes.—For what purpose? To tune a piano-forte belonging to Miss Wright.—Did you occasionally stay and dine at Hornby Castle, on those occasions? I did not always, upon those occasions.—Have you ever sold him music? Frequently.—Upon those occasions, have you communicated with him, with regard to the music you so sold? Certainly.—Did you ever receive of him the money for music that you had sold? Yes.—I mean payment? Yes.—From what you saw of him, was he, in your opinion, competent to the discharge of the ordinary business or affairs of life?—Yes; certainly.

Cross-examined by Mr. BROUGHAM.—Do you think he was a man fit to manage his own affairs? Certainly; as far as I had anything to do with him.—Do you mean to say that you have ever had an opportunity of judging how far Mr. Marsden was capable of managing his own affairs? Yes.—Do you mean to swear that you have ever had an opportunity of judging how far he was capable of managing his own affairs?—Yes, I do. Do you mean to swear that? Yes, positively.—Have you never sworn the contrary? Never.—That you have never sworn you had no opportunity of judging? That was as to the common transactions of life, but not as to the estate; we are all aware that to manage an estate requires a great deal of management.—I mean the disposing of it? I have not the least doubt of it.—How much money have you ever received at a time of him for music? Upwards of five pounds.—You never heard him play any tune? Never.

Mr. Sergeant ATCHERLEY.—We will now read the deposition of Robert Hudson in Chancery. He was dead before the first trial at York. It was read on that trial.

The Clerk of Court then read the deposition alluded to.

Robert Hudson, of Lancaster, in the county of Lancaster, hair-dresser, aged sixty-three years and upwards—

To the first interrogatory, he says, that he has known the complainant for the last two years, or thereabouts; the defendant, Anthony Marsden, late Lister, for twenty-five years, or thereabouts, now last past; and the defendant, J. M. Wright, and Margaret respectively, from their childhood, but that he does not know the defendant, Charles John Lister.

To the second interrogatory, he knew J. Marsden, late of Hornby Castle, deceased, in the pleadings of this cause named, from having been employed by him in deponent's occupation of hair-dresser and perfumer for thirty-five years, or thereabouts, next preceding his death. That deponent was in the habit of seeing the said J. Marsden, and cutting and dressing his hair, both at Hornby Castle, at Heysham, and at Lancaster, from six to eight times every year, and frequently conversed with him on those occasions.

To the twelfth interrogatory, he saith, that whenever he was employed by the said J. Marsden, he this deponent, acted by his sole directions. And deponent does not remember that he ever received any orders or directions from any other person, with regard to any thing he had to do for the said J. Marsden. And deponent says, that the said J. Marsden sometimes gave his direction to deponent by word of mouth, and sometimes by notes,

Digitized by Google

Digitized by Google

Digitized by Google

in writing, which notes deponent never preserved, but destroyed soon after receiving the same. Deponent certainly never saw the said J. Marsden write, but the said notes were in his name, and he always recognized and paid for the articles which deponent sent him, in pursuance of such notes. That the said John Marsden carried money about with him, for he always paid deponent his charges, both for cutting and dressing his hair, and for the articles of perfumery deponent sold him. That deponent was in the habit, for many years, of attending to cut hair at the seminary of the Rev. Robert Procter, at Hornby, and at Cantsfield, about three miles from thence; and used on those occasions to wait upon the said John Marsden, and cut and dress his hair, at Hornby Castle, for which he always gave deponent 2*s*. That when the said John Marsden was at Heysham, which is six miles from Lancaster, deponent went thither on purpose to cut and dress his hair, and for which he always gave deponent 5*s*. That previous to deponent ever attending the said John Marsden at Heysham, he asked deponent what he would charge for going thither, and deponent told him he should charge 5*s*. And whenever deponent was at Heysham, to attend the said John Marsden, he always asked the deponent to cut or dress the hair of any of the defendant's, George Wright's, family, who might happen to be there and to want his services. That when deponent cut the said J. Marsden's hair, in his own shop, in Lancaster, he always gave him a shilling. Deponent has, also, three or four times, had bills against the said John Marsden, amounting to five or six shillings, which he always paid to deponent in silver, and did not appear to be under the least difficulty in making any such payments; and on all occasions, whenever deponent saw him, he conducted himself like any other gentleman. That he was always very particular in the payment of his accounts, and in requiring receipts for the little bills he paid to deponent; and deponent believes he was able to reckon and cast up accounts, for deponent saw him cast up a small bill deponent delivered him, amounting, as deponent recollects, to six shillings and five pence, and consisting of three or four items.

To the last interrogatory he cannot depose.

ROBERT HUDSON.

Mr. Sergeant ATCHERLY.—We next propose to read the deposition in equity of John Gregory, who was also dead before either of the trials.

The Clerk of the Court then read the deposition alluded to, as follows—

John Gregory, of Gargrave, in the county of York, coachman. To the first interrogatory.—That he has known the complainant for seven years and upwards last past; defendant, George Wright, for nine years or thereabouts last past; defendant, Anthony Marsden, late Lister, for twenty years and upwards last past; defendant, Charles John Lister, from his childhood; and the defendants, John Marsden Wright, and Margaret Wright, respectively, for five years or thereabouts, last past.

To the second interrogatory.—That he knew John Marsden, late of Hornby Castle, in the county of Lancaster, deceased, in the pleading of this cause named, from having been in the service of Anthony Marsden, late Lister, as coachman for nine years, or thereabouts, next preceding the death of said John Marsden, which took place in the summer of 1826, during which period said John Marsden, made visits to said Anthony Marsden, late

Digitized by Google

Lister, at Gargrave, aforesaid, once or twice every year, and his visits were generally about a month each time; and deponent waited at table occasionally when they had parties; deponent had also eight or nine times attended said Anthony Marsden, late Lister, on his visiting said John Marsden, at Hornby Castle, where he has remained for four or five days each time; that deponent had known said John Marsden for seven years, or thereabouts, previous to going into the service of said Anthony Marsden, late Lister, from having been coachman with the late John Coulthurst, Esq. of Gargrave House, and from having, during such period, seen said John Marsden walk out at, and in the neighbourhood of, Gargrave, when he has been visiting said defendant, Anthony Marsden, late Lister.

To the third interrogatory.—that said John Marsden never appeared to deponent different from any other gentleman, in his mind or in his conversation, or manner of conducting himself; and deponent never observed any difference in the presence of strangers, except that he was short-sighted, and did not appear to know people when they first came into a room; that he was in every respect capable of taking care of himself, and of managing his own affairs, and transacting the ordinary business of life.

To the fourth interrogatory.—that said J. Marsden possessed a common degree of understanding; and deponent thinks he had a good memory, for during his last visit at Gargrave, in the month of January, 1826, deponent was waiting at dinner, and said, John Marsden came up to the said A. Marsden, late Lister, took him by the hand, and said to him, "Anthony, I wish you many happy returns of the day," and deponent says, that none of the family appeared to have recollected the day, which was said Anthony Marsden's birth-day, and they expressed their surprise, that said John Marsden should have remembered the day; deponent never saw said John Marsden manifest any silliness or weakness of judgment, nor any want of judgment or discretion; deponent cannot speak as to his competency to appreciate the value of property, but thinks he was competent to agree for the sale or purchase of it, and without a doubt he was competent to dispose of it, by will or otherwise, and to give proper and rational instructions in all such matters of his own accord, and without any other person putting them into his head. Deponent has not any recollection of ever seeing him exercise his own judgment, or of ever hearing him express his own opinion or determination, respecting the improvement or management of his property, or his own affairs, or make an inquiry respecting the same. Deponent remembers on one occasion, when he was waiting at table, that said John Marsden differed in opinion with some other of the party, but deponent cannot recollect either the person or the subject, but the impression on deponent's mind, is, that after there had been some talk about it, between them, it seemed to be agreed, that said John Marsden was correct; Deponent never saw said John Marsden since.

To the seventh interrogatory.—That he never saw John Marsden give any proofs of resolution or fortitude of mind, or manifest any symptoms of fear or timidity, except that he was afraid of large dogs. Deponent never saw him mounted on horseback, but has often seen him walking out alone, at the distance of two miles from Gargrave. That he walked out almost daily, and deponent never saw him attended by any servant on those occasions. That he always appeared to be at ease, and not in any want of assistance.

To the ninth interrogatory.—That when he attended said defendant, Anthony Marsden, late Lister, at Hornby Castle, there were sometimes

Digitized by Google

Digitized by Google

Digitized by Google

other gentlemen there, besides deponent's master, but deponent never waited at table, at the castle. That when said John Marsden was at Gargrave, he attended Church regularly twice on a Sunday, and on Sacrament days he stayed that service, and always conducted himself very properly at Church, and attended very much to the service, and made the responses aloud, and to this interrogatory, deponent cannot further depose.

To the fourteenth interrogatory.—That said John Marsden visited said defendant Anthony Marsden, late Lister, at Gargrave, as stated in deponent's answer to the second interrogatory. That a great degree of intimacy and friendship subsisted between them, and said John Marsden generally called him "Anthony;" but deponent does not know what relations they were. Deponent never heard said John Marsden express any opinion respecting said last-named defendant, his father, or family, or said complainant or his family, or said defendant George Wright, or say anything respecting the disposition or enjoyment of his property after his death; and further to this interrogatory deponent cannot depose.

To the last interrogatory.—That in the month of August, about five or six years before said John Marsden's death, deponent was at Long Addingham, in Yorkshire, and the complainant asked him whether said John Marsden was then at Gargrave, and on deponent's answering that he was, said complainant gave him his card, bearing the name of Admiral Tatham, and desired deponent to give the same to said John Marsden with his compliments, and deponent says, that on his return to Gargrave, he gave said card to Roger Chester, said John Marsden's servant, to be delivered to said John Marsden, with Admiral Tatham's compliments.

JOHN GREGORY.

Mr. Thomas Cuvelje sworn.—Examined by the ATTORNEY-GENERAL.—I believe you are an attorney in London?—I am.

Agent for Mr. Sharp?—I am.

Do you produce the proceedings in equity in the suit there?—Yes.

ATTORNEY-GENERAL.—I have no objection to take that from your lordship's notes.

GURNEY B.—The bill, and answer, and record, at Nisi Prius, and the *postea* indorsed upon it are mentioned as being produced.

ATTORNEY-GENERAL.—We consider that sufficient, as it is only to show the interest in it.

(Sir J. SCARLETT.)—I shall make an objection to that. I consider that the record of the issue joined is necessary to be shewn to let in other evidence.

ATTORNEY-GENERAL.—There must have been a trial, otherwise it would not have been mentioned in his lordship's notes.

(GURNEY B.)—It was upon the trial *divisavit vel non.*

The ATTORNEY-GENERAL.—And there then is the *postea.*

(Sir J. SCARLETT.)—I submit that by the dismissal of the bill it is not evidence.

(The ATTORNEY-GENERAL.)—I care nothing about it being dismissed providing my friend admits that the verdict was not set aside.

(Sir J. SCARLETT.)—I apprehend that upon issue joined between the same parties and the same subject matter the evidence of witnesses that are dead may be let in, as by the order of the court their examinations can be read as evidence. But the verdict of the jury upon the first trial is not evi-

Digitized by Google

dence, as it is utterly immaterial upon this occasion whether the verdict turn in one way or the other. The verdict itself is not evidence, generally speaking, without the judgment afterwards pronounced. That there was such an issue tried, I admit.

The ATTORNYY-GENERAL.—I apprehend my lord that the former verdict upon the issue is evidence: its effect is quite another matter. I am aware my friend says now that the verdict is not evidence, unless it be conclusive. It was decided in some cases, adverted to, that if the verdict be not pleaded as an estoppel, it can never be conclusive, but the case must go to the jury: they are to judge of the rest of the evidence. I do not mean to argue upon the effect of the verdict, but merely to tender it as evidence. I am reminded of the judgment, as handed to us, printed as a report or the Court of Exchequer, but your lordship may have some personal knowledge of that. I do not put this upon the footing of the verdict being followed by a judgment; but although that were done in *majorem cautelam* the judgment was not relied upon at the last spring twelve months, upon the trial which took place here. What was relied upon was this, that there was a verdict followed up by a decree, and that the decree or order of the Court of Equity was equivalent to a judgment of a court of law. We have a note of what passed upon that occasion, and probably your lordship heard it. Lord Chief Justice Tindal observed, "I beg to add, that the other judges agree entirely with me in thinking that the former verdict, although admissible in evidence, was not conclusive, so as to let in the reading of the will." That is my authority.

Sir J. SCARLETT.—I have great deference in what falls from any of the judges, but I conceive that that point never came before them upon argument; and, therefore, I merely wish to enter my protest upon your lordship's notes. I have admitted that the *postea* is evidence as a bill in chancery is evidence to show the effect of the answer, but the event of that issue is no evidence in this cause.

GURNEY, B.—The *postea* shows the issue.

Sir J. SCARLETT.—You show the *postea*, but nothing more. I apprehend that the verdict, except in a case of custom, where it shows the opinion of the jury upon an issue tried, might be evidence where there is no other judgment at all. But it is not evidence where there is a judgment, unless that that judgment be according to the feigned issue that has been set aside. Then the question is whether a simple verdict by itself be evidence? I submit it is not evidence, and that the jury ought not to have that before them which is to influence their opinions. When there is a verdict upon a matter of custom affecting the same subject matter upon another trial, it may be laid before a jury, but then it is not conclusive. Under these circumstances, I really do not see why the verdict in this case should be evidence, when it is not to be conclusive. I shall say nothing more upon it.

GURNEY, B.—As this was received upon the former occasion, and as I have not received any intimation that it ought not to be received, I shall admit the same evidence of that verdict: the effect of it may be another thing.

The ATTORNEY-GENERAL.—Then it may be considered as read.

Sir J. SCARLETT.—His lordship will enter it upon his notes, and my objection to it.

GURNEY, B.—Certainly.

The examination of the witness continued.

Digitized by Google

By the ATTORNEY-GENERAL.—Was there any application to the master of the rolls for a new trial of the issue?—Yes; there was.

Sir J. SCARLETT.—I object to that evidence of any application for a new trial, or any determination upon that subject.

The ATTORNEY-GENERAL.—Then I will not give that in evidence.

GURNEY, B.—It is withdrawn.

Was the bill afterwards dismissed?—Yes; it was.

Have you got the decree?—Yes; I have.

ATTORNEY-GENERAL.—I mean to tender it, my lord.

Sir J. SCARLETT.—I object to that.

ATTORNEY-GENERAL.—One object is to introduce the evidence of Bleasdale. I read it once, and I do not propose to read it again. That may be considered as read, as it has been verified and signed by Mr. Fraser.

GURNEY, B.—Yes; I have a copy of it.

Cross-examined by Sir J. SCARLETT.—Mr. Cuvelje, were you at York at the trial of the issue?—Yes; I was.

Do you know Frederick Dawson?—Yes; I do.

Was he at the trial?—Nearly the whole time; but not to hear the whole trial in Court.

Do you remember where he was sitting. Was it near where Admiral Tatham was?—Yes; near to him.

Was he frequently communicating with the Admiral during the trial?—Yes.

Have you got the schedule of any enfranchisement deeds here?—Yes; 37 or 38, I believe.

ATTORNEY-GENERAL.—Your lordship has the schedule of those deeds; there are 31 of them, and they are all more than 30 years old.

GURNEY, B.—The copy-holds of the manor belonging to Marsden.

ATTORNEY-GENERAL.—Yes; my lord—(handing a schedule of them to the other party).

Sir J. SCARLETT.—I do not find that the money was received.

By Sir J. SCARLETT.—Perhaps you can tell us the sum total of the consideration of those enfranchisements?—I have not the least idea. We can enquire if you wish it.

Sir J. SCARLETT. (to the witness)—Will you ascertain it, if you please, and let us know?

Witness.—Yes; I will.

Mr. Giles Bleasdale's examination, as taken in short-hand, by Mr. Fraser, was then entered as read, having already been fully stated by the Attorney-General, in his opening of the case.

The transcript as verified by the short-hand writer, was then handed up to his lordship.

The ATTORNEY-GENERAL.—We can prove Mr. Armstead's hand-writing, in the correspondence, which is called the miscellaneous letters.

Mr. John Sharp, sworn. Examined by the ATTORNEY-GENERAL.—Is Mr. Armstead dead?—Yes.

Are those letters his hand-writing? (Handing some letters.)—Yes.

Are those other letters all his hand-writing?—(Arranging others,)—Yes, they are.

ATTORNEY-GENERAL.—I do not propose to read them again, as I have

Digitized by Google

already read them; but I only wished to prove that they are in his handwriting. Mr. Cuvelje produces also a schedule of new deeds which may be handed up to your lordship, and a copy to the other side (handing in the schedule).

GURNEY, B.—What are these?

ATTORNEY-GENERAL.---The one is a deed dated 1st March, 1789, Marsden to Roundell. I think the witness Roundell put that in; there is another deed from Marsden to Richardson relative to the same transaction.

Mr. CRESSWELL.—The one is a conveyance of the Horton pasture, and the other is a property in the parish of Gisborne.

GURNEY, B.—It is the same transaction, and the same witnesses, Wright and James Barrow, and it is executed at the same time.

Mr. CRESSWELL.—Yes, my lord, (to the opposite counsel) what is the consideration in the conveyance to Richardson?

ATTORNEY-GENERAL.—This is the receipt—"Received the day and year first written, £4000," that is the conveyance of an estate in the parish of Gisborne, in Craven, to Richardson, and Priestly.

GURNEY, B.—Is that the consideration to Roundell also?—ATTORNEY-GENERAL.—It is the same conveyance of an estate in Gisborne, in the county of York, and also of the Horton Pasture.

GURNEY, B.—Are there two, both for four thousand pounds, or one of them only for that sum?

ATTORNEY-GENERAL.—Only one, my lord.

GURNEY, B.—It is one sum of four thousand pounds, but there are two deeds.

Mr. CRESSWELL.—The first states it as a conveyance to Roundhill alone. the second to Richardson and Priestly.

Sir J. SCARLETT.—I want to know whether they be different conveyances.

The ATTORNEY-GENERAL.—They are both there (handing them in.)

The next is a deed of covenant—this is a conveyance by Marsden, to Benjamin Ferrand, Esq. dated 27th January, 1795. The attesting witnesses are Wright and Bently, the consideration is £2,400, this appears to be a registered conveyance in the county of York.

GURNEY, B.—I hear there is a conveyance in 1797, to Tetley of Bradford.

ATTORNEY-GENERAL.—Then there is a lease of the Manor of Bradford, dated 12th February, 1795, from Mr. Marsden, to Benjamin Rawson and William Holden.

GURNEY, B.—I have none of the 12th February, 1797.

ATTORNEY-GENERAL.—I see here the consideration, it is mentioned.

Sir J. SCARLETT.—This is £2,100 paid by Rawson, and that by Ferrand, is £2400; that of Rawson is dated 13th February, 1725, it is a lease and release, £2,100 is the consideration.

Mr. CRESSWELL.—It is stated there was a bargain and sale between the same parties.

The ATTORNEY-GENERAL.—There it is (producing it.)

By the ATTORNEY-GENERAL.—Is this a bargain and sale?—Yes.

ATTORNEY-GENERAL.—And that is acknowledged by Mr. John Marsden, in the county palatine of Lancaster, to be enrolled 25th August, 1795.

Mr. CRESSWELL.—I am told that was a very common and short mode of doing it.

Digitized by Google

Digitized by Google

Digitized by Google

The ATTORNEY-GENERAL.—I am told the same thing, so we are agreed upon that.

Mr. CRESSWELL.—Then there is a deed from Marsden to William Tetlow —The consideration is £380.

ATTORNEY-GENERAL.—Yes. This is the receipt for that amount, " witnessed by Joseph Bentley and Samuel Hailstone."

Mr. CRESSWELL.—Then there is a grant of toll of £84. Are these given as the same conveyances that we were talking of first?

The ATTORNEY-GENERAL.—I have handed you the deeds.

Mr. TOMLINSON.—The one appears to be registered and proved in Chancery, and the other not.

Sir J. SCARLETT.—Let us first have the deeds produced.

The ATTORNEY-GENERAL.—I will now put in the will, and then that will be my case.

Sir J. SCARLETT.—But it is not your case yet. I thought you were going to read those letters between Alexander Marsden and John Marsden, which have not been yet read, and then to read the will. I mean to ask your last witness a question before the will be read.

ATTORNEY-GENERAL.—As to the two deeds just alluded to, I am quite content to take it that there was but one deed, and that was for £4,000.

GURNEY, B.—One deed cannot make any difference.

Mr. CRESWELL.—Yes, my lord, it may make a difference if there be two or three deeds instead of one on the same subject.

ATTORNEY-GENERAL.—We now produce the letters that passed between Alexander Marsden and John Marsden. I stated these only to the jury, and I now put them in to be read, or they may be taken as read.

Sir JAMES SCARLETT.—They had better be read, and let them be read in the order of their dates.

ATTORNEY-GENERAL.—They were in that order when I alluded to them, and I dare say they are so still.

Sir JAMES SCARLETT.—I understand those are original letters from Alexander Marsden, the others purporting to be copies by John Marsden. I wish them all to be read.

The CLERK of the COURT then proceeded to read the whole of the correspondence between Alexander Marsden and John Marsden as follows:—

" Dublin Sepr 27th 1811.

" Sir—You will be surprised at receiving a Letter from a person wholly unknown to you, and yet who presumes on having the privilege of addressing you. The desire of communicating with those who may chance to be of our own blood is natural; and will, I have no doubt, find excuse with you,—My Signature to this Letter will, in part, shew why I obtrude on you,—My Grand Father, Edmund Marsden, above a century ago, came to this Country, and by papers now in my possession, he must have belonged to a Family of that name who once lived at Bassford in Derbyshire, —His only Son John Marsden, was born in the year 1714; and after a long, a happy, and in a great degree, a prosperous life, he died in Dublin, highly respected in the year 1804—He was my Father; and I am, with Three others, the Survivor of his Children,—My Eldest Brother was, many years, Secretary to the Admiralty— my second is a retired Lieut. Col. from the Service of the East India Company— my Sister resides at Bath—Early in my life I was called to the Bar, in Ireland— afterwards I was for several years, Under Secretary of State here, and was materially engaged in the important periods of the Rebellion, and Union &c—Retiring from that Station in 1806, I have since held the office of Chief Commissioner of the Revenue, in which, with sufficient to do, I have less trouble, and anxiety than in my former Situations.

In such a Situation I need not add that my income is ample, and my circum-

Digitized by Google

stances altogether independent. Having married happily several years ago, I have Three Daughters; and I regret to add they are the only persons of the Family which was settled here, who carry the name to the next generation, neither of my Brothers having Children, tho' married; and my Sister being Maiden—my Girls are, one with another about fifteen years old, well looking and very well educated.

I have thus, Sir, stated all I have to say, and perhaps more than you think I ought to have done—but I have acted under the impulse of a feeling which, more or less, guides us in what we do; and particularly as I have actually never seen, or communicated with a Gentleman of my name beyond my own immediate relatives.

I feel it would be to no purpose to propose to you to pay a visit to Ireland; but f you will address any connection, or Friend of yours to us here, you will find that he shall be made welcome,—

I have the honor to be with due respect,
your very obdt. humble Servt.
ALEXR. MARSDEN.

(Addressed)
John Marsden Esqr.
Hornby Castle Hornby Lancashire"

"Hornby Castle, 20th Nov. 1811.

SIR,—I was indeed surprised, but very agreeably so, on the receipt of your letter you hon'ored me with. I was highly obliged by the frankness with which you have communicated to me your desent, and the circumstances respecting your family; and in return it is with pleasure that I state to you the short history of mine; if from thence it can be ascertained that I have the honor of a Relationship to a family of my own name, in every way so respectable as yours, it cannot fail to afford me the highest gratification.

My Ancestors resided for some Centuries at Gisburn Hall, in Craven, and had considerable possessions there, and also in a village called Marsden, near Colne, from which I presume they originally sprung, they had also possessions in the Borough of Clithero, and one of them sat in Parliament for that place. These possessions has long since been all sold. I believe a branch of my family settled at Manchester two hundred Years since, and I have heard that some of them afterwards removed into Derbyshire. Their arms were the same with mine. My Ancestors removed to Wennington Hall near Hornby about the year 1600. My Grandfather Henry Marsden died about 70 years since, leaving my Father Henry Marsden his only son. He died about 53 years ago, leaving my elder brother Henry and myself his only Issue. My brother died unmarried soon after coming of Age, When I became the Sole descendant of my family in the male line, which on my death will probably become extinct, as I have never been married. If this detail should induce you to make further enquiries I shall be happy to give you all the information in my power.

Your obliging tenders of hospitality to any relative or friend of mine merits my warmest acknowledgments, which I beg of you to accept; and should you or or any of your family or friends visit this part of the world, I shall be happy to receive you or them here, and should it be in the Shooting Season, I think I can promise as much diversion in that way as most private Country Gentlemen can Command, I am with sentiments of the highest respect,

Sir, your most obedient,
and very humble servant,
JOHN MARSDEN.

(Indorsed) Copy of a Letter to Alixander Marsden, Esq. Dublin."

"Dublin, December 9th, 1811.

DEAR SIR,—Your Letter of the 20th ulto. afforded me great satisfaction; and the curtesy with which you received the advance made by me has put me at ease for the liberty I took in opening the communication.—I freely confess you have given me more information than I ever possessed on the Subject of the Families which our name appears to connect.—I cannot doubt the accuracy of what you state, and I conceive that the Branch to which I belong, is that last mentioned by

Digitized by Google

Digitized by Google

Digitized by Google

you, which settled at Manchester, & in Derbyshire, and probably was not among those of the highest rank. The Arms, Always born by us, have an Unicorn for a Crest; and a Bend, with three Coots.—Some years ago I searched in Sir Isaac Heard's Office, in London, for any trace of the Family.—I found the Arms such as I describe, but they were recorded, I think in but one instance; and with very few particulars.—At that time I registered what I knew of my family; And the Actual state of my own, that posterity might not charge me with neglect.—Sir Isaac, from his own fancy, added to the Arms a Key, as descriptive of the offices of Secretary held by my eldest Brother William and myself; and a Trefoil to mark the branch settled in this Country, In the Engraving I enclose, the Arms of Cooper (my Wife's) are quartered with my own.

If my engagements here admitted of my visiting those places from whence the Family sprang, I should have great delight in tracing it.

Hereafter I hope to do so; as my attachments, are strong to the excellent Country which you inhabit; and the unsettled state of Ireland discourages any sanguine views of settling my family here.—

I have taken the liberty of mentioning to my Brother (who lives in London) the frankness with which you answered my letter; and he must feel the compliment equally with myself.

In all the Variety of my correspondence, for many years past, it is new to me to have the feeling which your Letter excited;—and I must retain the sense of it.

You give me no encouragement to think that we are likely to see you in this Country; but an excursion here in Summer, is found pleasant by many; and our Roads are very good.

I fear it may be some time before I can pay my respects at Hornby Castle, but I entertain the hope of being able to do so in the next year.—The favour of a line from you, at any time, will be very Acceptable.—All letters which I send or receive pass free of private charge.

I am, with great truth, Dear Sir, yours very faithfully,
A. MARSDEN.

(Addressed)
John Marsden, Esq. Hornby Castle,
Hornby, Lancashire.

"Hornby Inn, Sunday Morning.

"Dear Sir,—Having gone to London a few weeks ago, on leaving it I determined to return to Ireland by this road. I reached Hornby this Morning; and if you will allow my Daughter, and me to dine with you to day we shall have great pleasure in doing so.—I should have given more early notice of this travelling visit, if I had not wished to avoid with interfering with any engagement you might have at this time.

Dear Sir your very obedt Servt
A. MARSDEN."

(Addressed)
John Marsden Esq. Hornby Castle.

"Dublin, April 2d 1812.

"My Dear Sir,—It will give you Satisfaction to hear that we have arrived in this place in perfect safety, & very well—Our Weather was severe, after we left you; and particularly during our drive along the Lakes; but we made out the road very well from Newby Bridge, according to Mr. Wright's advice; and after passing by Wigton, & Carlisle, reached Port Patrick on Thursday night—The wind not being fair, we did not sail from thence until Saturday morning, when we had a passage of eight hours,—

I feel greatly obliged to you for your kind attention to me & my Daughter during our visit at Hornby Castle; & should be greatly gratified in an opportunity of returning them,—

I beg you will present our Compts. to Mr. Mrs. & Miss. Wright, with thanks for their kindness to us; and believe me to be my dear Sir

very sincerely yours
A. MARSDEN

(Addressed)
John Marsden Esqr Hornby Castle Lancashire.

Digitized by Google

" Dublin, June 6th 1812

My Dear Sir,—Shortly after my returning from England I had the pleasure of writing to you, and informing you of our arrival here—since then nothing very material has occurred in the public Concerns of this Country altbough a great deal that is important has taken place at your side of the Water,—I had several times thought of writing to you to ask your opinion of the nature of the disturbances which have prevailed in some of the Northern Counties—Have the Rioters other objects than those which they profess, and is the evil likely to spread—There are parts of the System which very much resemble what took place in Ireland previous to our Rebellion.

I hope and trust however, that the Vigour now excited in Checking the outrages (and which perhaps was too long delayed) will prevent your witnessing Scenes in any degree resembling ours.

We are still without knowing how the arrangements of a Ministry have been settled. Mr. Percival's Death is an irreparable loss—but as changes must take place, I hope that, some how or other, we may get a strong Government.

I do not let out of my mind your kind promise to let me have a Drawing of your Castle and Domain—I shall begin soon to look out for it—Any Case—or packet sent to Liverpool direct for me will find its way to Dublin.

I am sorry to tell you that my Daughter who was with me at Hornby Castle, has been very much indisposed since her return—Whether it was the Journey disagreed with her; or, as we rather suppose, the excessive Sea sickness, we cannot tell; but she has been poorly and losing ground ever since.

This Circumstance, particularly has made us give up all intention of Visiting the North of Ireland, and Scotland, this year, as we had intended, and we are likely to spend the Summer in Dublin and its Neighbourhood.

I hope you have enjoyed good health since I had the pleasure of seeing you; and that Mr and Mrs. Wright, and their Family are well—I beg to be kindly remembered to them; and am,

my Dear Sir
yours very sincerely
A. MARSDEN.

(Addressed)
John Marsden Esqr
Hornby Castle
Hornby Lancashire"

" Hornby Castle 22d June 1812

My Dear Sir,—I was duly honored with both your Letters, the reason for my not answering the first sooner, I expected to have had the pleasure of sending the drawing I promised you with it. The Artists in this part are so very scarce in that branch of drawing, that I could not meet with one that was able to execute to my wish. I expect to have it done soon as there is one coming to Lancaster in a short time—I do assure you it gave me great Satisfaction to hear that you and your Daughter arrived safe and well in Dublin, after so long a Journey, and travelling in such unfavourable Weather, and over so mountainous a part of the Country.—It would have given me pleasure to have seen you here at a more pleasant part of the Year, that you might have seen more of the Country about the Neighbourhood where I reside. With regard to the disturbed State of this Country you will most probably have heard a great deal more of it then, realy Exist. There has been some rioting in and about Manchester, Stockport, Huddersfield and Wakefield, but I trust there will be an end put to it in a very short time. Several of the Rioters was sent to Lancaster Castle from the Neighbourhood of Manchester and two of the Judges came from London to tri them, eight of whom was found Guilty and executed at Lancaster on Saturday the 13th inst.

The last Week thirty eight was brought to Lancaster Castle it is said for administering unlawful Oaths. I hope by the exertions that Government is now making, a total stop will be soon put to it.—All that has been taken yet, appears to be of the lowest Class and very Ignorant.—I think they must in the first instant, have been instigated by some persons of a more superior understanding, who now perhaps may think they have gone too far,—The Old Ministry are continued with a few added to them, you will most probably have seen a list of their names before this reaches you.

Mr. Wright was in London upon some Parliamentary Business at the time Mr. Percival was Shot, and had not left the place more than a few Minutes, when this unhappy event took place,—he said that his death cast a gloom over the whole Metropolis. I hope by this time your Daughter is recovered (which it would give

Digitized by Google

Digitized by Google

Digitized by Google

me pleasure to hear) and that you and your Family are all enjoying good health, to whom I beg my best regards ;—

(Indorsed) and am
copy of a Letter My dear Sir
To Alexander Marsden Esqr Most sincerely yours
Dublin JOHN MARSDEN

P. S. Mr and Mrs Wright desire to be kindly remembered to you."

"Bath March 31st 1813

"DEAR SIR,—I came to England with my Family a few weeks ago, and we have resided at Bath most of the time since—Although not much nearer to Hornby than I was in Ireland, I will not let the opportunity pass for addressing you particularly as it is a long time since I had the pleasure of doing so, or of hearing from you.

We have not come here on account of the ailment of any of us, thank God; after a long run of business in Ireland some holidays are necessary for me—and Mrs. Marsden and my Girls find amusement in this place, which is new to some of them—As I must soon return I think I shall leave them here—My Brother and his Wife from London, are at present with us.

I congratulate you sincerely on the new state of affairs on the Continent—It is a happy event that a check has been placed on the inordinate Schemes of the general disturber of mankind.—There may be great conflicts still, by which the Continent will suffer; but the interests of Great Britain seem to be now secured; and we have most gratifying prospects, if we can make things go on well among ourselves—The disgraceful scenes among the members of our Monarchy must have given you pain, as they do to every well-wisher of the Country.

I hope you have enjoyed good health during the last year, since I had the pleasure of seeing you, and that the improvements of your Estates at Hornby Castle go on to your satisfaction My Brother desires to be kindly remembered to you; and my Daughter who was with me at Hornby likewise sends her respects, and joins with me in Compts to Mr. Mrs. and Miss Wright, all of whom I hope are very well.

Yours my dear Sir always very sincerely
(Addressed) A. MARSDEN.
John Marsden Esqr Hornby Castle
Hornby Lancashire."

"Dublin, May 15th, 1813

MY DEAR SIR,—I returned to this place several Weeks ago, but my Family whom I left behind, have continued their journey to Harrowgate the Waters of which were recommended to Mrs. M. and the eldest of my three Girls and where they now are.

I mention this in case that you should happen, by any chance to go near to them there, and that you would do them the favour of calling upon them at the Granby Hotel.

I have not any news to send you—things look well on the Continent; but I fear we shall be tormented with this Catholic question at home,—with Compts to Mr. and Mrs. Wright, Yours dear Sir Sincerely

(Addressed)
John Marsden, Esq. Hornby Castle, A. MARSDEN.
Hornby, Lancashire."

"Heysham, 1st June, 1813.

MY DEAR SIR,—I feel myself much obliged by your kind Letters. I have been confined the greatest part of this Spring by a Violent attack of the Rheumatism, and was not able to write. I am now got perfectly well again, thank God. I was happy to hear all your Family was well and that your excurtion to Bath was pleasure. I shall be at Hornby Castle again about the beginning of September, and will be glad to see Mrs. Marsden and your Daughters to spend a

Digitized by Google

few Weeks with me if they are not returned to Ireland. Had I been in the neighbourhood of Harrowgate, I should have been glad to have paid my respects to Mrs. Marsden and the Young Ladies. Mr Mrs. and Miss Wright beg their Compts to you & Miss Ann Marsden, I am with best regards to all your Family,

My dear Sir most faithfully yours
JOHN MARSDEN.

(indorsed, Copy of a Letter to
Alexander Marsden, Esq.
Commissioner of Excise Dublin"

" Dublin, May 10th, 1814.

My Dear Sir,—I returned from England a few weeks ago, and while I was there I was not without the expectation of being able to pay a Visit at Hornby Castle, on my way; but some business more pressing than what I reckoned upon, hastened my return—I will not let a longer interval elapse without renewing our intercourse, which I always feel a particular pleasure in doing. I congratulate you very sincerely on the wonderful and prosperous change which has taken place in the affairs of Europe since this year commenced—No foresight could have led to a belief that such events could occur, and the Almighty has ordered it so to shew how much his Wisdom overreaches our Judgment—You must feel, as we all do, that our lives & properties are of more Value to us than they were; & look to the enjoyment of both with encreased satisfaction—As to France herself I fear that her troubles are far from at an end—the two parties there will hardly coalesce, so as to enable the King to carry on the Government & its fate is still to be decided by the Army, But it may be long before the rest of Europe, and particularly these Countries, are involved.

I can seldom write with satisfaction of the state of Ireland, where the disposition to mischief is always active,—It is supposed that the Letter lately received from Rome, will tend to quiet the Catholics; but I never feel confident on that subject.

My Family are all very well, and it would give us the greatest pleasure if in the course of this Summer you could prevail on yourself to cross the Channel, and pay us a visit. I hope Mr. Wright and his family are well, to whom I beg to be remembered—and I am,

My dear Sir
always very affectionately yours
A. MARSDEN.

(Addressed)
John Marsden Esqre,
Hornby Castle
Hornby, Lancashire

" Dublin Feby 10th 1815

" My Dear Sir,—It may have come to your knowledge through the Public papers, that I have resigned my Office of a Chief Commissioner of Revenue in Ireland; and as I am certain that you feel an interest in whatever materially concern me, I send you a statement that I have drawn up, for the satisfaction of my friends, of the causes which led to my taking a step of considerable importance as it relates to myself—

I hope on reading it you will be of opinion that I have acted rightly, Had I consulted my pecuniary interests alone I should have taken a different line; but considering the part I have filled for many years in this Country as a Public Officer, and not being without the means of supporting my family with comfort, I have acted up to what I thought best became my Character, in not submitting to the treatment which heads of Departments here have in latter times received from the very inexperienced persons who are sent over to rule us—

The measure I decided upon was in no degree expected and it was near three months before the appointment of my successor took place, in this last week, and I have the most gratifying testimonies, both here and in England, that my services were, nearly in all quarters, justly estimated, & the loss of them to the Public regretted.

In the Month of March I intend taking my Family to the Continent, where

Digitized by Google

Digitized by Google

few Weeks with me if they are not returned to Ireland. Had I been in the neighbourhood of Harrowgate, I should have been glad to have paid my respects to Mrs. Marsden and the Young Ladies. Mr. Mrs. and Miss Wright beg their Compts to you & Miss Ann Marsden, I am with best regards to all your Family,

My dear Sir most faithfully yours
JOHN MARSDEN.

(indorsed) Copy of a Letter to
Alexander Marsden, Esq.
Commissioner of Excise Dublin"

"Dublin, May 10th, 1814.

My Dear Sir,—I returned from England a few weeks ago, and while I was there I was not without the expectation of being able to pay a Visit at Hornby Castle, on my way; but some business more pressing than what I reckoned upon, hastened my return—I will not let a longer interval elapse without renewing our intercourse, which I always feel a particular pleasure in doing. I congratulate you very sincerely on the wonderful and prosperous change which has taken place in the affairs of Europe since this year commenced.—No foresight could have led to a belief that such events could occur, and the Almighty has ordered it so to shew how much his Wisdom overreaches our Judgment—You must feel, as we all do, that our lives & properties are of more Value to us than they were; & look to the enjoyment of both with encreased satisfaction—As to France herself I fear that her troubles are far from at an end—the two parties there will hardly coalesce, so as to enable the King to carry on the Government & its fate is still to be decided by the Army, But it may be long before the rest of Europe, and particularly these Countries, are involved.

I can seldom write with satisfaction of the state of Ireland, where the disposition to mischief is always active,—It is supposed that the Letter lately received from Rome, will tend to quiet the Catholics; but I never feel confident on that subject.

My Family are all very well, and it would give us the greatest pleasure if in the course of this Summer you could prevail on yourself to cross the Channel, and pay us a visit. I hope Mr. Wright and his family are well, to whom I beg to be remembered—and I am,

My dear Sir
always very affectionately yours
A. MARSDEN.

(Addressed)
John Marsden Esqre,
Hornby Castle
Hornby, Lancashire

"Dublin Feby 10th 1815

"My Dear Sir,—It may have come to your knowledge through the Public papers, that I have resigned my Office of a Chief Commissioner of Revenue in Ireland; and as I am certain that you feel an interest in whatever materially concern me, I send you a statement that I have drawn up, for the satisfaction of my friends, of the causes which led to my taking a step of considerable importance as it relates to myself—

I hope on reading it you will be of opinion that I have acted rightly, Had I consulted my pecuniary interests alone I should have taken a different line; but considering the part I have filled for many years in this Country as a Public Officer, and not being without the means of supporting my family with comfort, I have acted up to what I thought best became my Character, in not submitting to the treatment which heads of Departments here have in latter times received from the very inexperienced persons who are sent over to rule us—

The measure I decided upon was in no degree expected and it was near three months before the appointment of my successor took place, in this last week, and I have the most gratifying testimonies, both here and in England, that my services were, nearly in all quarters, justly estimated, & the loss of them to the Public regretted.

In the Month of March I intend taking my Family to the Continent, where

Digitized by Google

Digitized by Google

Digitized by Google

we shall probably reside for some time and be less sensible of the change in our situation than if we remained here.

I am sure you will excuse me for troubling you with this History; but in what relates to the honor and character of the name, I think I am not mistaken in making you a party.

I beg you will present my Compts to Mr. Wright, and believe me always—

my Dear Sir yours very faithfully

(addressed) A. MARSDEN.

John Marsden Esq Hornby Castle Lancashire"

"Hornby Castle, 10th March 1815

"My Dear Sir,—Before I was favoured with yours. I had read an account some time since in the newspapers, of your having resigned the Office of Chief Commissioner of the Land Revenue, which rather surprised me, till I had the pleasure of receiving your Letter and Statement, after perusing them: I am of opinion that as a Gentleman you could not act otherwise than you have done after such behaviour, as that of Mr. Peels. It has been very much regretted in this Country your declining to Act, as it is supposed the Revenue must suffer for some time before the person that is to fill the Office, is acquainted with the business of it, let him be ever so clever. It however gives me great pleasure to find that the sacrifice you have made will not materially injure your family. Whatever part of the Continent you retire to, it will give me great pleasure to hear from you. Although I am perhaps the idlest man in the world in answering Letters, I hope I shall never forget my Friends. Had I been accustomed to cross the Channel I should have availed myself of your polite invitation to Dublin. I am now groing into years and I have given up all thoughts of Travelling except to see my friends near Home. When you return to England or any of your Family, I shall be always happy to see you or them at Hornby Castle—I beg you will present my best regards to Mrs. Marsden and the Ladies, and believe me to be always,

My dear Sir

(Indorsed) most faithfully yours

Copy of a Letter to JOHN MARSDEN.

Alexander Marsden, Esq. Dublin.

P.S. Mr. Wright begs you will accept his best respects for your kind remembrance."

" Merrion Avenue near Dublin Sepr 22d 1815

My Dear Sir,—I have passed the most of the Summer with my Family at our Lodge, near Dublin without any material occurrence. Having but little to do, I have taken them to places in this part of Ireland, which we had not before visited, and where the Country is very beautiful.

The State of the Continent has not yet become such as to induce us to go there; and indeed the desire to visit France must be much abated.

You have participated in the Satisfaction which all subjects of the British Empire must feel at the change in the affairs of the Continent, but it is impossible to see a favorable issue to the interests of France, out of the present state of Matters there—I understand, however that a Treaty is concluded; and that the greater part of the Allied Armies are speedily to be withdrawn from thence. I cannot give you any favorable account of this Country. The want of energy in our Government has let disorders get to such a height as nearly to amount to Rebellion; and it will require a strong effort to restore order. The Catholic Cause, which had sunk very low, has gained Vigour by the foolish broil in which our Minister has engaged. I have no very partial feeling for the individual; but I deeply lament that the energies of Goverment should by these means, be weakened in a Country where, of all others they are most necessary. You have read of this affair, no doubt in the News papers. I send you further statements which have appeared here.

I have not yet decided whether we shall spend this Winter in London, or where

Digitized by Google

we are, but in case of our moving from hence, I will inform you of it. We are all very well and hope you may enjoy equal good health

To Mr. Wright I beg you will present my Respects, and

(Addressed) Believe me dear Sir always most faithfully yours

John Marsden, Esqre A. MARSDEN

Hornby Castle Hornby Lancashire"

"Dublin Jany 22 1816

"My Dear Sir,—When I last wrote to you it was rather my intention to have taken my Family to England this Winter, but I have found it best to settle them here, and we have accordingly come into town, I purpose going myself to England soon, and when I am in London I shall be happy to execute any commands for you—Letters will find me addressed to the St James Hotel S. James Street.

Nothing new has occurred in my public concerns; but in London I shall be more in the way, if any new arrangements take place,—Lord Castlereagh, I have no doubt, would send me abroad advantageously as to income, This Country continues much distributed, and I think is worse than is supposed to be in England.

It is very difficult to know what will do good here—The Catholic concessions I believe would avail but little—nor do I think that Soldiers, or Lawyers can bring about such a spirit of good order and loyalty as will alone make this Country prosper.—

The temporary evils of depressions of Markets and Trade, are felt in a considerable degree.

I beg you will present my Compts to Mr Wright and his family & believe me Dear Sir always most faithfully yours

(addressed) A. MARSDEN.

Dublin January twenty two 1816

John Marsden Esq Hornby Castle Hornby Lancashire"

"Paris Hotel de Rivoli April 18th 1816.

My Dear Sir,—As I happened to be in Paris at this time it may amuse you to receive a few lines from hence, the objects of interest here are much lessened but Paris still contains a great deal deserving of Notice & attractive by its novelty.—The City has been much improved by the late Emperor, but the Ancient Buildings of the Louvre, & several others have not been rivalled by him—Many valuable Paintings, and Statues remain—The principal Gallery is Shut to the Public, but I got access and found persons Arranging what remains & filling up the intervals made by the removal of those works of Art very properly returned to their owners, by others from different quarters.—They have still here the principal Works of Reubens, Vernet, Le Seur, and many others of other Schools. The general circumstances of this Country, are at this time very peculiar, and it is difficult to ascertain very accurately the strength of the present Government, while there are 150,000 Men in Arms on the frontiers, kept up to preserve its existence. But to all appearance Louis will maintain his Reign, and dispositions will come round to him, as the Inhabitants learn the value of Peace—To all common observation they seem to be as favorably disposed to him, and his family, as they could wish, but there is now no doubt a lurking affection for times of more glory, and a dislike of the very humble state to which the great nation has been reduced.—There are violent dissentions between the King & the Two Chambers; but these are considered as not tending to affect the general security, tho' they must occasion much embarrasment in carrying on measures —Here there have not been less difficulties thrown in the way of the Budget of the Minister than with us, but the principal difference is on the subject of Elections, & the duration of Parliamt, which it is supposed will lead, at least to a prorogation—In the Chambers they affect our forms, but they have little

Digitized by Google

Digitized by Google

Digitized by Google

actual liberty in measures, as all to be discussed must be proposed by the King, & all communication between the two Houses must pass through him, & he may stop them at his pleasure. I am intimate with our Ambassador here, with Ld. Hardwickes Family, & several others, I have had the most favorable opportunities of seeing all persons, & places I could wish—My Companion here is Mr. Plunket of Ireland whose name you read of in our debates. We came only for a few Weeks, & shall set out for England before the end of this—I was glad to find the Royal family here, in appearance better than they are reported to be in our Papers—the Duchess D'Angouleme is very well looking and is an object of peculiar interest.

I shall remain but a very short time in London, and will return to Ireland, where my family are.

Dear Sir
Yours faithfully
A. MARSDEN.

John Marsden Esq.
Hornby Castle
Lancashire Angleterre"

"London 3 George Street Hanover Square Feby 13th 1817

My Dear Sir,— Soon after I had the pleasure of writing to you in the Spring of the last year I returned to Ireland, where I remained until the end of the last Month at our house near Dublin—

A few days ago I arrived here with my family and think it likely that we shall remain for about four months—It is so long since I had the satisfaction of hearing of or from you, that I take opportunity of giving you a few lines to enquire how you are, and hope that, at your convenience I may hear from you,—

Town appears to be very full and it is not easy to discover symptoms of the distress of which we hear so much, & which no doubt, prevails in a considerable degree.

I think that the danger to be apprehended from our Mob reformers is over, so far as London is concerned. The violence of their proceedings has rallied all rational men against them in sufficient time; and if Government does not yield too much in reducing the strength of the Army, I think all parts of the Country may be kept quiet; prosperous times I hope will soon come round, and yet such times are so connected with times of war, by our long habits, that we rarely enjoy them when is peace.

If I can execute any Commission for you here, I beg you will let me know, as I have abundance of leisure on my hands.

My Family are all well, and desire me to present their respects, and with mine to Mr. Wright, and his family, I beg you will believe me my dear Sir,

London, thirteenth February. 1817,
Yours very Sincerely,
A. MARSDEN

Jno Marsden Esq Hornby Castle,
Hornby, Lancashire."

"Macclesfield Friday March 6th 1818.

My dear Sir,—I came this far on my way from London last night, intending to have continued my journey into Lancashire, and to have called at Hornby Castle. The extreme badness of the weather, which has prevailed ever since I left town and which has no appearance of change has made me forego the pleasure I should have in proceeding as I intended and I am now going to cross to Chester and from thence to Holyhead on my way to Dublin, where my family now are.

I hope at a more favourable season to be more fortunate in my attempt to pay you a Visit—I came lately to London in consequence of being offered the Situation of a Commissioner under the late Treaties with Spain and Portugal, and as I am inclined to accept of it tho' only of a temporary nature it will occasion me to go to and from Ireland more than once in the course of a Summer as I should not move my Family until I saw it to be better worth my while.

Digitized by Google

It is a very long time since I have heard from you; not I believe since I wrote to you in France, It will give me great pleasure to learn that you are well, as I continue to feel those respects for you which I ever entertained since I introduced myself to you being the only individual of the name (out of my immediate family) with whose acquaintance I have been gratified, I beg to be remembered to Mr. Wright and his family, and am Dear Sir

Very truly your obedient Servant

A. MARSDEN

John Marsden Esq
Hornby Castle Hornby Lancashire"

" 7 Clifford St. St James Decr 29th 1819

DEAR SIR,—I send you a Copy of my friend Mr. Plunket's Speech made the first day of the Sessions, which I think must give much satisfaction to the Gentlemen of your County.

I have long advised him to take the line he has now done.

About two Months ago Mrs. Marsden, returned from Ireland, after letting my House & settling other matters there, for the purpose of our residing at this side of the water, I am now Settled with my family here, where I have been in luck to get a very good House, in a convenient Situation both for my Office & our intercourse with our friends—

I congratulate you on the Successful stand made in Parliament against the Radicals, who if not thus checked, would soon have subverted all order in the Country.

I trust that all is now secured—The Finance of the Country presents some difficulties, but they will be overcome if we stand well by each other.

If I can execute my Commission for you here, I beg you will let me know, as I have leisure enough to execute it.

My Brother who was in Town yesterday, is very well,—I beg you will present my Compliments to Mr. Wright, & believe me—

Yours very sincerely

A. MARSDEN—

John Marsden Esq
Hornby Castle Hornby Lancashire"

" Hornby Castle Feby 12th 1820.

MY DEAR SIR,—I was favoured with yours enclosing Mr. Plunket's Speech, for which you will please to accept my best thanks It is a most excellent one, and delivered at a time when it was much wanted. If we had more Gentlemen in the House of Commons of Mr. Plunket's abilities it would be of great benefit to the Nation, but I am sorry to say there is but few like him. The stand made by Parliament I trust there is little doubt has saved the Country from a combination to overthrow the Constitution of these Kingdoms, by the vilest of the human race, who themselves has nothing to lose but might get something in the scramble. We had not any Radicals near where I live, if there were any they never shew themselves, When Hunt and his party came to Lancaster at the last Assizes for this County they had great difficulty in procuring Lodgings at all. I did not hear that they were noticed by any person except one man of the name of Crompton, who has lately come to live near the Town of Lancaster, and since that time the Gentlemen in his Neighbourhood will not even speak to him. It gives me great pleasure to find that you and your family has got a House so much to your satisfaction I hope you will all live long to enjoy it. My eyes was very much affected the last Summer but by going to the Sea side for a few Months they got well, this winter being so very severe has brought on the complaint again, and prevents me from writing so much as I otherwise should. I feel much obliged to you for your kindness in saying you would execute any Commission I might want in Town. Should I have any, I shall not fail to embrace so good an offer, When you see your Brother please to make my best

Digitized by Google

Digitized by Google

Digitized by Google

respects to him. My friend Mr. Wright, desires me to present his Compliments to you, and believe me to be with best regard to Mrs Marsden and the Ladies

My dear Sir Yours very sincerely

JOHN MARSDEN

(Indorsed) Copy of a Letter to
Alexander Marsden Esqr
Cliffords Street St Jame's London"

"7 Clifford St. Sepr 22d 1820

My Dear Sir,—I believe that it will give you pleasure to be informed that my eldest Daughter was Married yesterday to Son of the Bishop of Bangor.—The young Couple have liked each other for some time, and the Match was concluded to the entire satisfaction of both families, and with every prospect of happiness to the parties

Mr. Majendie, has a small property in Cumberland, and will be likely to visit it some time in the next Spring, When he goes with his Wife to your Neighbourhood I will inform you of it, & also take the liberty of introducing them to you—My Brother, who is in Town, desires to be kindly remembered to you, and with our Compts to Mr. Wright, I beg you to believe me my dear Sir

Yours very sincerely

A. MARSDEN.

London Septr. twenty two 1820
John Marsden Esq
Hornby Castle Lancashire.'
H. Bangor.

Attorney-General.—We now propose to read the will of J. Marsden, and the codicil.

Sir James Scarlett.—Allow me first to ask a few questions of Mr. Cuvelje.

Mr Thomas Cuvelje recalled. (By Sir James Scarlett.)—Pray, Mr. Cuvelje, is Mr. Procter alive?—I believe so.

You have not heard that he is dead?—No; I believe he is alive, and in Lancaster.

Were you at the York assizes in 1830?—Yes.

Was Mr. Tatham, the other witness to the will, then alive?—Yes.

Was he examined?—No; he was not.

Nor Mr. Procter, the other witness to the will?—No.

Sir James Scarlett.—My lord, I must now object, *pro forma*, to the will and codicil being read upon this occasion.

Gurney, B.—I think I can shew how this point occurred before upon the former trial in Lancaster; although there were then given in evidence the judgment and evidence of Mr. Bleasdale upon the former trial, yet the argument turned entirely upon the effect of the same verdict, and, to use a phrase then used, it was stated that Bleasdale's evidence was put in in order that nothing should be omitted. Such was the argument on the one side as to the reading of Bleasdale's evidence; whilst, on the other, it was objected to the reading of, both on the ground that it was not the best evidence, he being dead, and there being a living witness in Court, and upon the ground that the judgment of another Court afforded no authority upon that subject. I decided that the will should not be read, without the living witness being called, as the evidence given by Bleasdale was not sufficient, unless the authority of the Court were specifically interposed. Upon that point the judges have determined, as I find by a note made at the moment,

Digitized by Google

that the evidence of Bleasdale might be read, as it was not to be considered as secondary evidence, but that his examination taken upon the former trial should be considered as being the same thing as if he were living. Secondary evidence is when the hand-writing of the person attesting a will is proved by another; but, in this case, Mr. Bleasdale having formerly given his evidence, that evidence was to be considered in the same light as if he were still living, and as if he were giving it *viva voce*, and it was considered as unnecessary to call any other attesting witness to the will. On that account I shall now receive the will, although the other attesting witness, the Rev. Mr. Procter, be now living.

Sir J. SCARLETT.—Will your lordship be so good as take a note of my objection?

GURNEY, B.—Yes; certainly.

By ATTORNEY-GENERAL.—Mr. Cuvelje, I beg to ask you if Reginald Remington was examined as a witness at York?—Yes; he was.

By GURNEY, B.—By the present plaintiff?—Yes, my lord.

The will of John Marsden, of Hornby Castle, was then put in, and read by the Clerk—for which see the Appendix.

GURNEY, B.—Does it appear what the other attesting witness, Edmund Tatham, was?

ATTORNEY-GENERAL.—He was a yeoman in the neighbourhood. Now we will read the codicil to the will.

The Clerk of the Court then read the codicil,—for which see the Appendix.

SIR JAMES SCARLETT (to Mr. Cuvelje).—What is the age of young Mr. Lister Marsden?

Mr. Cuvelje.—I believe, he is eighteen; but I only know it from information.

SIR JAMES SCARLETT (addressing his Lordship).—My lord, as the defendant's case is now concluded, it would now become my duty to address your lordship and the jury, on behalf of the plaintiff; but at this advanced hour of the day, I beg to suggest that it would not save any time if I were to give you an hour to-day, and then have to resume my case to-morrow.

GURNEY, B.—I agree to whatever is most suitable to the convenience of the parties; we will therefore now adjourn.

At four o'clock, P. M. the Court adjourned till to-morrow.

Digitized by Google

Digitized by Google

Digitized by Google

THE CASE FOR THE PLAINTIFF.

LANCASTER CASTLE,

Thursday, August 28, 1834.

FIFTH DAY.

Sir JAMES SCARLETT,—May it please your Lordship — Gentlemen of the Jury,—I rise to address you on behalf of Admiral Tatham, the plaintiff in this very important and interesting case, I do assure you, under great personal embarrassment, arising from a natural weakness of voice, as well as from accidental infirmity, which makes me anxious lest I should not be able to prosecute this cause, in pursuance of my duty to my client, as I should wish to do, unto the end. But I shall, however, endeavour to do my best to discharge that arduous duty which now devolves upon me, in order to place the evidence you have heard, and which you are about to hear, in its proper light. In doing so, I shall not occupy more of your time than may be absolutely necessary for that purpose. Perhaps that infirmity, under which I at present labour, and which I complain of, may be my excuse for not adverting to several of the topics which my learned friend the Attorney-General, has already touched upon, and called your attention to, in order to prejudice your minds, and bias your opinion; many of them have been introduced for the purpose of diverting you from the main subject which you have to try, and of captivating your senses at the expense of your reason. If ever there were a cause that depended less upon the observations of counsel at the bar, as to the inference to be drawn from the evidence, this, I may justly say, is that cause. Upon that topic, although I should not have felt it necessary to trouble you, yet there are a great many of the subjects which my learned friend has incidentally introduced, for the purpose of adorning his address to you, which I

Digitized by Google

must of necessity touch upon. There are three topics I am bound to notice, in particular, as they are evidently introduced to raise a prejudice in your minds, to divert you from the only point which ought to be the object of your consideration, and to direct your attention to some collateral issue. He thinks, by his eloquence, to interest your passions, as I have already observed, and to distract your attention from the genuine and lawful issue in the question between us.

Gentlemen, the first of these topics is relative to the conduct of Admiral Tatham himself. The Admiral has now arrived at a great age, he has spent the greatest part of a long life in fighting the battles of his country during the late war, and has been engaged in various services afterwards; he bears upon his person various symptoms of his gallantry in pursuance of his naval services. He is the heir-at-law of the late Mr. John Marsden, of whom you have already heard so much; he is the prosecutor of this suit; he is doing that which either of you, or any gentleman of the land, would have thought it his duty to discharge, if placed in the same situation; if he thought, as the plaintiff does think, that this will has been imposed upon Mr. Marsden, against his interest as heir-at-law of that individual. Why should he be held up to ridicule, or as a sort of monster, and subjected to the attack of my learned friend, the Attorney-General of Lancaster; or exposed to your indignation, as one in whose breast every spark of humane feeling has been extinguished? and that too, merely because he has been under the necessity of adopting the usual steps which any man in his situation ought to take in vindicating his rights, and asserting his privileges on hearing of the death of his relative. My learned friend thinks he can prove something to the prejudice of the plaintiff, because he the plaintiff, immediately upon hearing of Marsden's death, had served upon the proper officer, Mr. Sharp, a *caveat* to dispute that will, which has been denominated the will of the deceased. Gentlemen, I can only say, if I had been in Lancaster, and had been consulted, I should have advised the admiral to do the very same thing which my learned friend, Mr. Armstrong, advised him to do upon that occasion. For that I take no credit to myself, although no inconsiderable portion of my friend's eloquent address to you has been devoted to an observation upon that proceeding, two or three times repeated; but it is easy to conceive what were his motives. Gentlemen, you are told at the same time that the Admiral is the only person that can dispute it, as he is the heir-at-law; and yet you are told in the very next breath, that he is the last man that ought to have done so. If it be meant that the evidence is so strong that the whole case resolves itself into that which has been already adduced by my friend, then the observation was unnecessary; for I should be glad to know where the good sense of the observation is founded, that he is the last man in the world that ought to do that which

Digitized by Google

Digitized by Google

Digitized by Google

my friend acknowledges no other person can do if that will is to be disputed at all.

It is said in the next place, that Admiral Tatham lay by for many years, and my learned friend is surprised that he never sued out a commission of lunacy against his relation, Mr. Marsden, during his life time. Gentlemen, allow me to state, in answer to that observation, that Admiral Tatham was not heir-at-law till the year 1819. His elder brother, an officer of rank in the army, was the only person who could have done so, but he had long previously gone to America, where he died in that year; he was the only person, who, during Marsden's life, could have sued out a commission of lunacy, but I beg to say, that that is one of the last acts that any person as a relative, would undertake to do. Admiral Tatham, instead of being heir-at-law previous to that time, and, as such, able to adopt any proceeding of that nature, was passing most of his time either in the service of his country, or in the dock-yards, and could not, at the same period, be supposed to be looking after his affairs in the neighbourhood of Lancaster. Under these circumstances, I say that he could not, and ought not, to have sued out a commission of lunacy against Marsden. He had neither a right to do so, nor had he any reason for adopting such a step. If he had attempted it, Marsden, while under the control in which he was kept, would have been easily persuaded to have disinherited his heir-at-law: besides, what right had the heir-at-law to imagine that such interference was necessary? He could not do so till he learned what had taken place. Then, and then only, had he any right to issue a caveat, as a caution against the said will being proved; but not knowing the fact as to what had taken place, till lately before Marsden's death. For what reason should he not be entitled to adopt such a course as that of serving a caveat, he not having previously taken out a commission of lunacy? In all your experience of the world, I dare say you will think, with me, that it is the very last act one would adopt. How long did Lord Portsmouth live in a state of lunacy, before any such commission was taken out? He was living in company, and associating with many of his relatives and acquaintances, and managing his own affairs, and yet no commission of lunacy was taken out against him, till after many years had expired. Gentlemen, you are well aware that it is a step of great harshness and severity, which no humane man would proceed to without the most urgent necessity, and until matters had proceeded to the last extremity.

Gentlemen, another topic that has been touched upon by my learned friend is this—that Admiral Tatham, if he have a right to succeed at all in this cause, ought to have a right to turn out various parties who have acquired a right of property by having obtained mortgages upon this estate. My learned friend

Digitized by Google

assumes that proposition upon his own authority; I admit his authority to be very great, upon some points; but, I must say, I differ with him upon that point, most directly. I will not measure my authority with his; far from it—but I am surprised he can state gravely such a proposition! I should say that such an attempt would not only be absurd, but impossible and illegal. He could not have both estates, he could not have the estate of Wennington Hall, and also the Manor of Hornby, which was purchased partly with the money of others, and partly with the money which the other estate sold for. No, he had no power to do it. Then, in what way could he recover those estates which had been sold by Marsden, who did not die seised of both these estates? Suppose Marsden had executed a deed which he was not authorised to execute; yet, if a party lent him money to pay for the estate, and he, having granted security, as being the party in actual possession, and in receipt of the rents and profits, I should be glad to know how Admiral Tatham could have alleged that Marsden had not a right to do so? All that could have been done would be, by his having in law a right of entry, for without that, the estate could not pass. But suppose that it could, and that any attempt in law could have been made to recover the Yorkshire estates—what would have been the answer? A bill in equity must have been filed to get an account of the produce of these estates, and the answer would have been that it had been laid out in the purchase of estates in Lancashire, that the trustees had died seised of them, and that therefore Admiral Tatham could not recover those estates which had been so long enjoyed; but I should like to know any instance in which a party comes to set aside a transaction by which he has been imposed upon without showing that such imposition had been practised? He must do equity. Those who seek equity, must do equity; if Marsden himself had fallen into other hands and purchased the Hornby estate, and if any of those persons had filed a bill to set aside the contract as to this or that farm, as part of the Wennington estate, he must show that imposition had been practised upon him, or that an inadequate price had been given for the estate, and that the party was privy to that imposition. But it would have been said, that a fair price was given, and that he was not aware of the imbecility of the party. In that case the bill would have been dismissed, or that the party claiming to set it aside in court would be accountable, and compelled to pay the amount into court. Upon that point, therefore, I submit to his lordship, and to you, gentlemen, that neither in law, nor in equity, neither in justice, nor in conscience, is there any ground for saying, that Admiral Tatham would not be compelled to do that which he now seeks by the effect of your verdict. Upon these grounds, I give my direct negative to my friend's affirmative, because I have reason to believe that that observation of my

Digitized by Google

Digitized by Google

Digitized by Google

learned friend had a great influence in another place. It was one of the reasons that I, for one, was not satisfied with the verdict given at York.

Gentlemen, I beg to say that there is no man who entertains greater respect for the learned judge who tried that issue at York, than I do. I have long known Mr. Justice Park as having been a most distinguished member of the bar on the northern circuit. I have lived upon terms of intimacy with him many years, and have entertained for him every respect and affection; but still I may say that Mr. Justice James Allan Park, who tried the cause, is, like many other men, fallible. I am sure that he himself is too magnanimous to think that there is any disrespect meant on my part, by saying of him that I was not at all satisfied with the manner of his trying that cause. Gentlemen, I do not mean to say that that learned judge had any corrupt feeling, or any improper motives in his manner of doing it—far from it. I believe he acted according to the dictates of his own conscience; yet I think there were certain topics frequently laid down in my learned friend's speech that had an irregular hold upon that learned judge—and with him Admiral Tatham had no chance; and yet, if a judge do not say any thing to a jury in point of law that is incorrect, one cannot have a ground upon that head for moving to set the verdict aside. If he take a vehement part in favor of one side, even according to the evidence, and expresses himself so, one cannot in point of law make that the ground for setting it aside, although the party may have just reason to think he has not had an equal trial, and that the matter has not been well laid before the jury, but that the whole cause had been influenced by the observations of the judge upon the matters of fact. Still, I say, the party affected by such a verdict would have great reason to be dissatisfied, although an opportunity may not have been afforded him to move, on legal grounds, to set it aside. My learned friend, both in his opening speech and his reply at York, was very loose in his statements and arguments, upon the topic as to setting aside all those deeds, from some supposed consequences here presented as being likely to ensue.

The Attorney-General, interposing.—I beg my learned friend's pardon: I do not think that topic was even adverted to.

Sir J. Scarlett.—You must excuse me: I thought that I was right. I think that the particular nature of this will—not the technical terms of it, but the particular nature of this will—the mode in which Mr. Marsden had actully divested the person whom the defendant says was intended to be the particular object of his bounty, namely, Mr. Lister Marsden, and had made him, as it were, a prisoner in Hornby Castle—I thought it was of importance to tell the jury how that was effected, so as ultimately to be in favour of Mr. Wright instead of Mr. Lister Marsden. The judge said that it was not necessary so to state it. I

Digitized by Google

was dissatisfied with not having that right of statement. All those who were for Admiral Tatham, were dissatisfied with the proceedings upon the trial of that issue. I ask, were they not justified, in seeking for a new trial before another tribunal? —and yet, my friend being adverse from that right, he being satisfied with that verdict, has stated that it was evidence in this cause, although not conclusive, with a view to influence your minds. Gentlemen, I shall dismiss that point with one other observation. I am bound to entertain great doubt whether I should not have objected to the verdict itself being put in, as it was no evidence in this cause, but merely evidence given to another cause, which had nothing to do with this one—but also that it was not founded upon evidence to justify that verdict; and I doubt not that you will come to the same conclusion; but if you, upon hearing the evidence upon this cause, think that it is not just, you will try this one without being influenced by any opinion given by another jury. It is just the same as if one witness on one side would say, Marsden was competent, and another witness upon the other side, would say he was not. That is the opinion I trust you will come to, and say whether they, the former jury came to that opinion upon such grounds as can satisfy your minds. But still, their finding that verdict ought not to influence you, unless the reasons given for such a finding be such as to induce you to entertain the same belief. In short, the verdict in the first cause ought not to have any weight upon you in this. Gentlemen, I notice these topics not merely as incidental to the case, but as matters material for your consideration; and I come now with as much brevity as I can in this most laborious trial and minute investigation, to state the case on the part of the plaintiff. I do so, because, instead of making observations on the case of my friend, there are many observations I have to make upon the plaintiff's case, if I have strength enough to call your attention minutely to those deeds that have been so much talked of—to Bleasdale's evidence—to those letters that have been read, and, lastly, to the will itself. These points, too, form the substantial part of my friend's case, unconnected with the parole evidence, which consists very much of mere opinions. Do not suppose I decline doing so, or calling your attention to those points touched upon by my learned friend, if I reserve that part of the question till after I have stated my own case, and put you in possession of the sort of facts I shall lay before you.

Gentlemen, Mr. Marsden was the younger brother of Henry Marsden. I believe neither case can furnish you with testimony of the original position of either of these brothers at the period of their very early infancy. My friend's case has furnished none, nor can mine go to that distance back in point of time. It has been insinuated that Marsden's education had been neglected; and that insinuation has been put into his own mouth, as it strikes me, in an extraordinary way; because, the neglect of a man's education

Digitized by Google

Digitized by Google

Digitized by Google

might not be serving him; as the want of an ordinary school education might be well made up by a man of competent talent, even below the average that has been proved. He had the foundation of reading and writing. Mr. Marsden's education was not more neglected than Wright's, and yet you find him, step by step, inspiring in every man the notion that he was a man of talent; but there is not the least reason to doubt that both the brothers had not in early life the same opportuniteis and extent of education. They were, indeed, the sons of the same father and mother, and were under the same protection in their early infancy. The evidence takes up the late Mr. John Marsden at a school at Lancaster, when only five or six years old. I cannot carry it any higher; and that is the time my friend begins with him. What is the reason for thinking that John Marsden had not the same advantage, in point of education, that his brother had? It was very obviously the interest of the family not to have limited his education. You have heard that the Marsdens had, among other livings, the living of Gargrave, worth about £100. or £500. a year in those times. He had also, amongst his other possessions, the advowson to provide for one of the younger branches of the family, and therefore it was natural in his parents to give him an education so as to go into the church, as it was very probable that he might acquire an honest living in that honorable profession. It was therefore very probable that the father would have been anxious to give him as good an education as the other brother, if he had been capable like the other of receiving it; but in point of fact, he was not capable. You will find that he had not derived from nature those abilities that would have even placed him in any state of capability beyond the judgment of a child,—that he was incapable of going beyond a certain progress. Children, according to their respective ages, shew certain marks of capacity of mind, which grows with their growth, and strengthens with their strength; for, according as the body grows, it unfolds the mind in the same proportion as the manly organs unfold themselves. But yet there are cases now and then occurring, as to which, by some mystery unknown to mankind, the body and the mind do not go together, so as to make the same progress. Human intelligence cannot comprehend this: the body, as it were, overgrows the mind, so that the mind does not make the same progress as the body does; and you will find the same childish habits, which, in an individual grown up to manhood, appear ridiculous and preposterous; while the same timidity—the same alarms—are found in that sort of combination, which, in a child, would be nothing. In these cases, such habits and imbecilities, being united, and carried to a great extent, become downright incapacity in a man, although they would appear as nothing in a child of seven or eight years of age; yet, if you see the same imperfections in a man, you may conclude—that nature has not done him justice. It sometimes happens, on

Digitized by Google

the contrary, that the mind has overshot the body: it sometimes occurs, that persons, of great bodily infirmity, have, from nature, a want of corporeal strength; and, yet, the individual has extraordinary powers of mind; but, on the other hand, we sometimes find that they both go together. Now, gentlemen, you will learn that Marsden did not possess any degree of intellect, or such as was equal to that of an ordinary child of ten or twelve years of age. He could not be taught, as I shall prove to you, by a variety of witnesses. You have heard from Mr. Wilson, and also other witnesses, who were with him at school, that great pains were taken to teach him; but his mind was inaccessible to the attainment of that which other children were instructed in. He was removed to a school, at Kirkby Lonsdale; and he was there with Mr. Bell, the Chancery Barrister, who, you will recollect, figured largely in my learned friend's address, and, perhaps, will do so in his reply. He certainly is a clever man; and, I know he was a wrangler, at Cambridge. You have heard that he has been a King's Counsel; and, therefore, my friend infers, from the mere circumstance of their being at school together, that Marsden was a competent man. If that were a necessary inference to be drawn, then, I may ask, might he not have had Mr. Bell here as a witness, as easily as he has had a learned Judge, to give his evidence upon this occasion? But no: Mr. Bell is not brought, for reasons best known to my friend. Then, gentlemen, as to the Bishop of Chester (now the Bishop of Bath and Wells); he is, no doubt, a very honourable man, and he too is within reach; he would have thought it his duty to come here and speak as to the competency of Mr. Marsden, if they had thought proper to call him; but, instead of that, they are satisfied with the allusion which has been made to Marsden's speech. I mean the speech he made on returning thanks for his health being drank by the Bishop of Bath and Wells, he would have told you whether Wright were or were not his keeper; but no, the Bishop has not been called. Mr. Marsden was at Kirkby Lonsdale school, and great pains were taken to teach him there. I shall call the usher of that school before you, if he be alive; if not, you will have his former examination read to you. From that, you will learn that his master desired him to pay particular attention to this boy, Marsden; and that he tried to make him learn, but could make nothing of him. You will also find that one of the boys under whose care he was placed, was desired to pay particular attention to him, as to teaching him, but he could not do any thing when under his care! The boy had written down several sums of figures, and had desired him to sum them up, but on their being shown to the master, who knew what was the state of the boy's mind, he found, as usual, that he could not make him understand what was meant. This usher at Kirkby Lonsdale took all the pains he could to instruct him, but he found that nature had not given him intellect

Digitized by Google

Digitized by Google

Digitized by Google

to receive it. He purchased three or four score of quills, of twenty-three to the score, and he gave him them to count, but he never could get him to count beyond twenty, although he tried him repeatedly. You will find he also gives his opinion about him, as being quite incompetent to understand any instructions given him in the commonest rules of arithmetic. He remained some time there, and then he was placed under Mr. Croft. Mr. Croft was a gentleman in the church—a polished man —a friend of the family—acquainted with Marsden's elder brother—and had seen them both together, but not in regard to any business. It appears he accompanied Mr. Croft to Weyhill, in Surrey, where he remained under his tuition for not quite a year, but Mr. Croft could do nothing with him. Perhaps he there got his polite manners and exterior forms of civility, not difficult to acquire, and which he retained ever after, from the time of his being ten or twelve years of age. He brought him to his brother's, at Gargrave, shortly before Henry Marsden died. Then the elder brother being of age, John Marsden came to reside at his mansion at Wennington Hall; John Marsden became an inmate of Henry Marsden's house.

Now, gentlemen, I will call before you witnesses to shew you what his habits were, in addition to those which have already been proved. I do not propose to approach to a full detail or description of him, as the particulars are to be given you in evidence. They are not forgotten by me, nor intended to be suppressed, but you shall have them from the witnesses. I shall merely describe his general character, upon which I shall make this one general observation: if you have a mind to try the intellect of a man, the best mode of doing it is by proving facts. I do not pretend to deny that a conversation of half an hour may leave an impression that a man is of a weak mind. You have that proved already, as no witness has been called that would say he was otherwise than a man of a weak intellect; but it requires something more to measure a man's capacity, as the witness Mr. Clarke said, that before he could give you a competent judgment of his capacity, he should have found it necessary to have had further conversation with him. He told you that he had never measured his capacity by any further conversation than saying such things as these: "this is a very fine day," or "very fine weather,"—"a very pleasant walk,"—"I hope you are well,"—"yes, very well,"—"I am very glad to hear it." That is not the sort of conversation to measure a man's capacity. It may leave an impression upon your mind that he is not a fool, but it is not calculated to inform you whether he could, upon investigation, count twenty. I was going to say that that would give you no satisfaction, nor enable you to draw a distinction between facts and opinions. I will shew you that at the age of twenty-one he had all the pursuits of a child, frivolous and trifling in his conversation and habits, such habits as were peculiar to a child of seven

Digitized by Google

or eight years old. I humbly submit to you that there are many better means of judging and forming an opinion of any man's intellect than merely talking of the fineness of the day, or whether he have been making improvements at Hornby Castle or not.

In the first place you will see an instance of his behaviour when he was twenty-one years of age. On one occasion, having found in his brother's house a red and blue striped jacket—an old sailor's jacket—in a lumber-room, he took off his coat, and put that on, and then went to the boat-house, and, as a child from the nursery, he got into the boat and imitated the act of rowing by way of amusement. Another instance of his singular behaviour occurred at what is called a reaper's annual feast, where there was a sort of interlude introduced, in which a man came in with a fantastic dress, composed of a sheep skin painted in a peculiar way, with a long tail to it. It happened that the man who had been so dressed retired into a room in the public-house, having thrown off his dress till he should come back to dinner. On that occasion Marsden had watched him out, and having fallen in love with the dress, he took off his own clothes, and put on this dress, and some one finding it missing gave an alarm that it was stolen. However, it was soon discovered that Marsden had taken it, and put it on; he was pursued, and was overtaken before he got home. This, certainly, gentlemen, is not a thing that one would expect a young man of twenty-one years of age to have been guilty of. It appears that he had intended to go home with it, but was overtaken before he reached his destination. The same sort of frivolous conduct was exhibited on various other occasions; and, you will observe, I speak of facts, not opinions. He entertained various sorts of unreasonable alarms, even when grown to manhood, such as a child would do at an early age. You have had read to you the examination of Roger Chester, (one of the latest of yesterday,) stating a remarkable fact, which fact will be repeated to you by various others, whom I shall call. That person, Roger Chester, had been a servant in the family; he had heard that Marsden was bit by a dog in infancy.

GURNEY, B.—Not in infancy; but he merely said he had been bitten by a dog.

SIR JAMES SCARLETT.—Yes, I believe so, my Lord. I do not know, gentlemen, that it will be proved to you otherwise; but, if he were actually bitten by a strange dog, that was not to make him afraid of all his own dogs. He was accustomed to the harriers, that were kept for hunting; but it would appear that his steward could have it in his power to keep a dog that his master was afraid of. Marsden told Chester that he was afraid of that particular dog; and, if he were so, I would ask why did he allow his steward to keep it?—why did he not order Wright to take it away from his premises altogether? Why did he not say, with his usual politeness, "Please to take that dog away,

Digitized by Google

Digitized by Google

Digitized by Google

and do not let me see him more?" No, gentlemen, he did not do so; but I will shew you that he had in general a fear of strange dogs, as well as of his own, and also of various other animals. Besides that, he was subject to great alarms, even of the most inoffensive animals. You have seen a child of seven or eight years old alarmed at a dog, or even at a sheep; he gradually approaches them; and, in a little time, he goes up to them, and then he becomes so familiar as to caress and coax them. Such was not exactly the case with Mr. Marsden, for he would not even venture up to them. It appears that he was alarmed at pigs; and the bold turkey-cock, with his red gills, would almost send him into fits. I will prove that, in one instance, he saw a turkey-cock strutting across a field, in a bold and majestic manner, that would not alarm a child, and far less ought it to have alarmed a man of forty. That fact will be proved to you to have occurred as to Marsden; but, gentlemen, it is not only the history of Marsden that I am about to open, but it is the history of other persons connected with him. In the last year of his brother's life, Wright was hired as a menial servant in his brother's house, and I beg now to call your attention to that particular point of the subject.

Gentlemen, Mr. George Wright is represented as the son of a small farmer. It appears that he was sent to a school, not a grammar school, but to a school kept in the same house with the grammar school, where he learnt reading and writing. Whether his father were a small farmer or not, I do not pretend to know, nor maintain that he was not; but this I know, that Wright himself was in the humble situation of a menial servant, after he had left that school. Dr. Geldert, whose horse he was accustomed to take care of, was so good as to recommend him to Henry Marsden. Hornby had been familiar to him from his infancy, and he had occasionally waited at Wennington Hall previously to this, when they had company to dinners that were given upon feast days; he was employed as an occasional waiter at public-houses, and he generally took care of Dr. Geldert's horse. It happened, just at that period, that Henry Marsden was wanting a servant, and accordingly George Wright was hired by him. I do not deny that Wright is a man of considerable sagacity and talent; and although not a man of education, yet he has become a tolerable, though not a perfect proficient in epistolary correspondence; and you will accordingly find that many of those letters, which are said to have been written by Marsden, are conceived in the loose style which you will find prevails in those confessedly written by Wright. In the last year of Henry Marsden's life, his aunt, Mrs. Cookson, had come to take care of his family, her husband being dead. At that time John Marsden was an inmate of the house. She was an aunt by his father's side; but I should also tell you, that the family of the Cooksons are

Digitized by Google

related to the Marsden's in another way. There are no less than thirty or forty of that family nearer connected with Lister of Gargrave, than even with the Marsden's. She came there to take care of the family, and particularly of John, who was there during the last year of his brother's life. For some reason or other, which I do not pretend to offer to you, Henry Marsden was about to part with Wright, as well as with Mrs. Cookson. Henry Marsden is represented as having died of a consumption, of which, it is said, he was long ill. That, however, was not so; he, in point of fact, died suddenly, or, at least, after two or three days' illness. He had had an illness for a few days, which illness alone occasioned his death, although it were perfectly unexpected; so much so, indeed, that it happened that new suits of livery were preparing for his servants. The tailors were in the house at the time of that event, and upon its occurrence the orders were countermanded for the liveries that had been chosen, and mourning liveries were ordered instead of the others.

My friend says, "if Henry Marsden had been conscious of his brother's infirmity, would he have left him without making a will?" To that observation, I answer, Henry Marsden died suddenly; he was only twenty-three years of age at the time of his death, and he had certainly every prospect of enjoying a long life; as much so, at least, as any man whatever. He is said to have given his brother certain deeds, to preserve in his possession. That was a story circulated by some means or other, I know not how, nor for what reason; but that he should give John Marsden some deeds to keep in his custody, was, I think, under the circumstances you shall by and by hear, the most unlikely thing in nature. Mr. Wright, as I am informed, was about to be removed from the service, and had actually, at the period of Henry Marsden's decease, his clothes tied up in the servant's hall, and ready to depart. On the very day his master died, Wright was reinstated in the service, by Mrs. Cookson, who then took upon herself the right of remaining in the house, to take care of John Marsden; and, from that very day, Mr. Wright became the favourite of Mrs. Cookson. At first when he came, he was merely called George; then he was called Mr. George, and after he became bailiff, he was called Mr. Wright. I will shew you undoubted proof of the most intimate connexion existing between Mrs. Cookson and him. She was an old woman, and he a young man. Wright, however, very soon began to know what was most for his own interest; and we know that there have been some instances where some men make their passions subservient to their interest. Wright was one of those. He gained an ascendancy very soon over Mrs. Cookson, so as to have the control of her completely; and as she was the person who had been appointed to take care of the family, and having the control of John Marsden, Mr. Wright most naturally, or of course, became her assistant. It would have been, certainly, I must say, much

Digitized by Google

Digitized by Google

Digitized by Google

more decorous for other persons to have performed that duty; but under the circumstances in which that young man was situated, he became then completely under the control and management of those two individuals. Mrs. Cookson ought, on the death of his brother, to have appointed a respectable clergyman, or some such person, to take that arduous and responsible situation of controlling that young man, immediately after the death of Henry Marsden. She, however, found Wright, with her assistance, sufficient to do so. She gave Wright all her influence, and by and by her own influence and control became his. From that moment up to the death of John Marsden, I mean to submit to you that Wright had the control, not only of his person, but his property and his inclinations; and, in regard to having any will of his own, Mr. Wright was, as it were, acting the part of a dry nurse to him.

In the course of a few years it became the project of Mr. Wright to dispose of Wennington Hall, and to purchase the estate called Hornby Castle. My friend, indeed, acknowledged that he does not suppose Mr. Marsden was capable of conceiving that project himself; it is, however, a very important point in the cause. Here was a young man, said to be of rather weak intellect, and not likely to marry; not cultivating any expensive pleasures. You have not found any one example of his doing that which other young men of his station in life would do. He had acquired no expensive habits; he had purchased no race horses; was addicted to no pernicious habits of gaming; in fact, he took delight in no amusement but that of playing upon the fiddle, and walking about the fields, or in the streets of Hornby. These, in short, were the whole amusements of Mr. Marsden. What occasion had he to sell that estate of Wennington Hall, which formed the ancient patrimony of his ancestors? Would it have ever entered into his mind to do so at all, but for the suggestion and machinations of his steward Mr. Wright, who had acquired that control over him to make him do whatever he pleased? He had one notion, it is said, or at least he is so described to have had, by Wright's case, and that notion was *family pride;* and it is alleged that that notion is evinced in his will, by his appointing that his successors should take the name of Marsden. He was possessed of another talent, as has been attempted to be proved, and that was of being a great *genealogist;* but, Gentlemen, what does that amount to? I have heard of a celebrated French poet, who says something to this effect—"*all old fools that have good memories are great genealogists.*"

Now as to that project of disposing of Wennington Hall, you have had a letter produced, that was written for him, shewing how that project to sell his paternal estate originated—that estate which had been upwards of 200 years in his family. Why should he sell it? Why did not that estate suit his taste? Why did it not gratify his simple pleasures, which were not expensive? Why,

Digitized by Google

in the name of common sense, and, I may say, common decency, should he think of selling that estate of Wennington Hall? Can you suppose he would say, "I will sell Wennington Hall, as my doing so will prevent my getting into difficulties?" Did not that very act involve him in difficulties, such as might appal even the strongest courage? Can you, Gentlemen, conceive that such a project was a desirable thing for any man of common sense to do, placed in his then situation? Would any man of common intelligence have submitted to it, unless he had been under the complete control and dominion of another? No, Gentlemen; you will find, on the contrary, that, weak as he was, Marsden opposed the project in a certain degree, so far as he could venture to counteract the control under which he was placed. You will find that Mr. Greene, in the correspondence which adverts to that part of the subject, shews, that the prudent and cautious Mr. Greene was, at the outset, averse from the project; and was surprised at the proposition that was made, and which had been represented to have proceeded from Marsden's own suggestion. You will find that Mr. Greene had, in point of fact, originally no instructions whatever, as proceeding from Marsden himself; but that the proposition and the instructions proceeded from James Barrow, Mrs. Sarah Cookson, Mr. George Wright, and a Mr. Fitzgerald, who is represented as having been a Barrister, and who was then staying there. All these parties concurred in affording their assistance, and backing the proposition. Mr. Greene acquired all his instructions from them. Accordingly, the first letter which has been produced, as having been written at the time, comes through the aunt, Mrs. Cookson, and Mr. Wright. They were in the secret; they were in the plot. I shall now read that letter, as it is part of the history of the case. It is dated August, 1787, and it purports to be a letter from Marsden addressed to Mr. Greene. In that letter he says—

DEAR SIR,—My Aunt is so poorly she has desired me to answer the Letter she received last night. I wish you had concluded the Bargen with Mr. Dunn —when you saw him you had full powers from my Aunts last letters given you which I saw and approve on—If the consequences were of so little concern to me that I would trust to the mere toss up of a die, I would never have bid at it at all, but I look upon it as so necessary to my interest that I beg and intreat you to make no delay to purchase it if even I give a thousand or two advanced— as soon as you have concluded the Bargain I beg to hear from you, if you think it not improper please to propose them to keep it a secret awhile. My Aunt joines with me in Compts and am, Dear Sir Your obedient humble Servt

Wenington Hall August 1787. J. MARSDEN.

Gentlemen, that letter was written in August, 1787. You will have to draw your conclusion, whether or not that letter was suggested by Marsden himself, or whether it was not most probably sketched out by Wright before Marsden copied it, or whether it was, or not as concocted by Wright and by Fitzgerald, with some assistance from the aunt? Be that as it may,

Digitized by Google

Digitized by Google

Digitized by Google

it is somewhat singular that Mr. Greene did not receive the instructions, as to this purchase, by a correspondence originating solely from Marsden. Another thing is to be observed, that Greene did not think it was labour mis-spent, to correspond for some time, before he would consent to interfere in what was proposed. Here is his answer to some other letter from Greene, which has been already produced, dated in September of the same year. You will see that this letter was written by Mr. Greene, because he had written to some person, that he was not satisfied with that authority which had been communicated. I use this letter, in order to shew that Mr. Greene was acting under instructions originally proceeding from other persons than those from whom he thought they ought to emanate; and that he wanted something more specific to shew, under Mr. Marsden's own hand. He says—

"Wennington Hall Sept 7, 1787.

DEAR SIR,—Mr: Fitzgerald having communicated a Letter from you to him dated the 3d. instant in which you express a wish that I should give my sanction to the treaty of the Hornby purchases, I write this fully to authorise it. I observe you say that Mr. D says we must give £53,000. If that largeness of the sum be the only objection I request you will on my behalf offer for the Estate £53,000. and close with them as soon as possible—And I shall be very glad to hear that it is obtained at that price—If more we must give it rather than let it slip. I refer you to the former Letters and leave it to you to settle the terms of purchase as well as circumstances will on the principles in these Letters enable you to do.

(The letter there alluded to, is a letter from a person of the name of Fitzgerald.) Then he concludes thus—

I am sorry it will be the means of detaining you in Town longer then you intended but I rely upon your attention to it for which I shall always think myself obliged to you.

I am, Dear Sir,
Your most obedient humble Servt,
J. MARSDEN.

My Aunt & the Gentlemen present their Compliments

Gentlemen,—this shews that Fitzgerald was at that time at Wennington Hall. Mr. Fitzgerald was, as I submit, evidently the person who made Marsden write this letter; I make no doubt of that. Now look at that letter, and compare it with the one that was written at Buxton, and see if it was the same man who composed and dictated it; it is impossible to confound it with the diction of any other that has been produced. This letter, I aver, was clearly written by Fitzgerald; and this poor, simple man, John Marsden, copies it. This is one of the best letters, it may be said, in point of style, that has been produced before you. I ask you, is it possible to imagine that he wrote better then, and worse afterwards? That letter is dated the 7th of September, 1787. I shall point out that to you more deliberately by and by; but, in the mean time, it is fit I should state to you, that this letter shews that there then originated the scheme of pur-

Digitized by Google

chasing Hornby Castle; a scheme which could never have entered into this young man's head; but it was the scheme of his own agent, Wright; and it appears that Greene himself thought it so dangerous a business, that he required to have the sanction of Marsden, under his own hand, for what was to be done. My friend will, of course, say, that he, Greene, thought Marsden's sanction sufficient. I answer, that Greene knew this; namely that provided the money, obtained by the sale of Wennington Hall, were laid out in the purchase of a new estate, and provided it were an adequate amount, it would not injure the property of Marsden. At that time, therefore, no further objection was stated: all that remained to be considered was, whether it was an adequate purchase, and that no injury was to be done to the young man; but, still, Greene wanted some authority under his own hand; or rather, I may say, it amounted to some act under Wright's, or under the aunt's sanction, or any friend of hers. At all events, it is clear the scheme did not emanate from this young man. What do you think of his saying "you must give £53,000 for Hornby Castle—or, if they ask more for it, you must give it," Mr. Greene represents how dangerous it was, "as the price of property might fall; unless you can sell Wennington Hall for as much as this other estate will cost; you must take care what you are about." The letter of Mrs. Cookson, which was formerly read, was proved to have been found amongst Greene's papers, and, accompanying it, was found the letter of Mr. Marsden. They appear to have been united in the same sheet, when found in the cupboard, although they have been afterwards separated.

ATTORNEY-GENERAL.—I do not mean to discuss that now, but I shall object to Mrs. Cookson's letter being stated to have been found there.

SIR J. SCARLETT.—Here is the envelope endorsed, of Marsden's letter, relating to the purchase of Hornby Castle. You will find one of Greene's, wherein he desires it to be considered what he can sell Wennington Hall for, and she sends up this composition, containing the outline of the terms, and stating—

SR.—I sent the outlines of the terms not being able to do more since which Mr Fitzgerald with Mr Wright have made a calculation of the value of the estates in a moderate way in case of any of them not answering as we may have reason to hope You will see it amounts up to about 50,000 without the liveing of Gargrave which is not in the calculation so that I hope your fears will be removed as I thought Mr. Fitz. would be better able to make you apprehend the scheme I got him to be so good to write to you. I am &c.

SARAH COOKSON.

N. B. You will observe that we shall have a surplus when the living is disposed of.

That is to say, "If we sell Wennington Hall for £51,000, and if the living of Gargrave besides is to be estimated at £400. a-year, and if you add the probable amount of the price we get for that,

Digitized by Google

Digitized by Google

Digitized by Google

we shall have more than the £53,000, and therefore there would be a surplus." It was clear, however, that Mr. Greene would not proceed in the matter till he had got a calculation made showing that there were funds to pay for it, and perhaps not thinking it a bad business if he were making purchases under Lord Wemyss' title, Fitzgerald, the barrister, assisting him in it. It appears by this statement, said to have been the sentiments of this young man, that he would give £53,000 for the Hornby Castle estate. Under these circumstances, the contract was concluded, and the articles signed. It is impossible to suppose that Mr. Marsden, of his own accord, would ever have thought of such a scheme. If not, then you are to consider, in whose hands was he? It was one of the most important events of his life, and he is introduced to it at the suggestion of his aunt, Mrs. Cookson, and Mr. Wright.

It appears, gentlemen, that Mr. Wright had acquired a pretty competent knowledge of the value of land: he had been acting, for a considerable time, as the steward of the Wennington Hall estate; during all that time, perhaps, he was probably much in the society of his father, who, I have stated, has been represented as a small farmer. I have no doubt that Wright thought it was a useful purchase, and that Greene thought so too, as there appeared to him, at length, to be no great danger in parting with the other property. I hope you will not omit to recollect the observation that was made the other day, in speaking of Admiral Tatham, as to this estate having been purchased by Marsden, and that Admiral Tatham might come to take advantage of the purchase; that, I have no doubt, was the thought that Wright at that time had, and it is part of my case. He had conceived early the project of making the best use of the infirmity of his ward John Marsden, and he speculated that by and by would come the time when he might derive great benefit from this property, either to himself or his own family, but Wright thought it would look more strange were Marsden made to demise away this property which had been two hundred years in the family than if he demised a newly acquired property. If he had used any other means than those, he foresaw that it might be said "Wennington Hall must be left undisturbed." Then he began to see his way. His defence is, as we have it from my friend's own mouth, most extraordinary; namely, "that it would not have appeared natural to have demised away Wennington Hall;" so, I have no doubt, it struck Wright, and at the same time that the act of selling the old property afforded evidence to prove that Marsden had some capacity, and then also that he might do what he liked with that property which he himself had purchased. He commenced from that period, and made the same sort of arrangement in the transaction of purchasing the Hornby property. From all this statement of facts already proved, it appears that Marsden was clearly an

Digitized by Google

instrument in the hands of his aunt Cookson and Wright, assisted by those other agents employed to do this. All these parties had that close and intimate connexion, which I will prove to you, accompanied by that sort of dominion and control which a man acquires over a woman who submits to him; and the probability is, that all acts were submitted to him, in pecuniary matters, as well as others.

Miss Tatham was also an inmate of the house at that time, and you will see by and by what influence Wright had over her, and why the female relations of the family did not visit at Hornby Castle. You will not find that any ladies of respectability visited there. Although there were relations in abundance both male and female, amounting in all to about forty or fifty, nearer to Marsden, yet you find no female relation nearer than Mrs. Cookson, except the Listers, who were accustomed to come to the Castle; and when Wright attempted to introduce the intended Mrs. Wright, she was rejected by Mrs. Cookson. In 1791 that was so; and what were Marsden's pursuits then? Marsden hunted (it is said) sometimes, and he rode on those occasions a cropt mare; that cropt mare he called Daphne. Gentlemen, I will shew you what he thought upon that subject; it was a very quiet animal, and was, like himself, short-sighted; and, when he had to go up a hill, he was very dexterous in galloping; but you have not heard of any instance of his galloping with other gentlemen, accompanied by the hounds in pursuit of game. One gentleman says he met him when he was walking, and he appeared to be afraid of the harriers. I will tell you what he thought of his horse; when it is said he liked riding, it is meant that he admired his crop mare, Daphne, so much, that he was anxious to raise a breed of cropped mares; he thought he could have from her *a breed of mares with cropped ears*, as she was.

Gentlemen, I will shew you a vast number of other particular acts, denoting the childish apprehensions of Marsden, and his want of intellect. I do not say that he was such an idiot as that he could not keep out of fire and water, nor that he had not the common judgment of a child of seven or eight years of age, so that he could not display much of similar habits and civilities. One of the witnesses, a young lady behind me, said he used to serve his guests at the tea-table with great politeness; you are aware, gentlemen, that there is a great similarity in those things observed amongst children; there is no want of civility, attention, and politeness, in children. Even suppose he could play upon the violin, as Mr. Lushington says, what is there in that? Many a young lady can play upon the pianoforte at a very early age. The question is, whether he had an intellect that made him fit for any thing of the nature of an inquiry into a transaction on a large scale?

There are one or two other examples, gentlemen, which I may

Digitized by Google

Digitized by Google

Digitized by Google

state to you. I shall prove to you that my learned friend, with the exception of Roger Chester and John Nutter, called no other of the male servants that had been at any time living in the family. John Waller was an old servant of Lister's; Nutter and Chester had been servants at Hornby Castle, and one of them contradicted a material part of their other testimony. From 1791, when they came to Hornby Castle, down to the year 1826, when Marsden died, you have now no inmate of Hornby Castle called to prove to you any thing. You have had some gentlemen who were occasionally in the habit of dining there, but there are some who have not been called—such as Mr. Carus Wilson, who, it has been said, is so ill that he cannot attend. My friend wanted to insinuate that he would have come, but he was ill. Mr. Sharp decidedly stated that he knew he would have come, and then he said that he had been with him, but found he was ill. I can only say that I understand he was at Appleby assizes. There was another gentleman, a Mr. Stout, who is now nearly blind, and, it is said that he had been in the habit of dining there. But, besides bishops, clergymen, and other gentlemen, who used to dine at the hall, there were various tradesmen, or many persons of much lower degree who dined there; but Wright makes a selection from those few of the first description who were in the habit of visiting at the Castle, upon whom Marsden bestowed his civilities and hospitality, and made a kind impression; but I must confess I should have been much better pleased to see one half of those who had formed some of the parties, who were most familiar in the family; those who knew the domestic arrangements better than mere strangers occasionally visiting; and to have learned whether those family dinner parties were of frequent occurrence or not, and what were the internal arrangements of the castle. No, not a single witness, with the exception of those two, has been selected, to prove to you anything as to the internal concerns of that house. Where, for instance, are the Misses Wright? You hear, from Bleasdale's testimony, that they were there during the time he came to reside in that part of the country; and when he used to visit at the castle, they were there, together with the father and mother. One of those ladies, Margaret Wright, has a legacy left her by Marsden of £5,000. It may be said that she is clearly an incompetent witness; the others have nothing, but, still, neither of them are called. That is remarkable, and also that there is not a single servant called who lived there, except those two, Nutter and Chester, who are brought forward by Wright. One or two tradesmen are called, wherever they could get any one to prove that Marsden paid even a seven shilling bill. Those instances of payment by him are very few, but, still, my friend felt it necessary to give some instances of that sort. Gentlemen, you have it in evidence that Marsden visited Mr. Brancker, a respectable merchant in Liverpol, who married one of the Misses

Digitized by Google

Wright. Where is Mr. Brancker? Neither he nor his wife, nor man-servant, nor maid-servant, nor any one living in the house during those transactions, is brought to give you any account of their domestic arrangements in Marsden's life-time. In short, gentlemen, if I were to recapitulate to you the evidence you have heard, you would not find one single witness, with the exception of Nutter and Chester, who give you any account of conversations with Marsden at Hornby Castle, when Wright was there—I do not mean when Wright was personally present in the room, but, when he was there, controlling the house, as he did from the first to the last. But I was going to tell you some further instances of his behaviour, which I shall prove to you.

Now what think you, gentlemen, of this? Wright on one occasion was making some improvements for certain conveniences in the house—I may mention, even in the face of this audience (for I mean no offence) he was constructing two water-closets, the one on the floor below, and the other on the floor above; and of all the childish amusements I have yet mentioned of which Marsden was guilty, this is one of the most striking instances. The workmen had completed the lower one, and were trying it, by drawing up the handle to demonstrate how the water could run in from the cistern, when that was drawn up. Wright came to see if it were perfect; Mr. Marsden accompanied him, and when Wright went up stairs to see how the other one would answer the purpose intended, Marsden came near to where the workmen were and observed how the water rushed in. As soon as Wright had gone up stairs, and Marsden found he was remaining some time, he followed his example in drawing up the handle, and, finding the water turning round in an unusual manner, he continued drawing up the handle, and admitting the water, so as to entertain himself by observing it running round; he did it again and again, and expressed all the joy and delight of a child about it; and, at seeing it rush in and rush round, he threw in some pieces of paper occasionally, to see what effect it would have; and, at seeing the paper run round too, he laughed excessively and appeared much delighted. Wright came in when the operation was going on, and immediately drove him away by using a violent expression. He ordered him to leave the place just as any one would order a child. In pursuing these amusements, he had nearly run the whole of the water off. I only mention this circumstance, as a fact, to shew how this man of grown years amused himself. I do not like to go into a great number of instances of the like nature, lest they should be tiresome to you; the more especially as the witnesses I shall call will prove them to you. There are one or two other circumstances which, however, I may notice to you. I have already mentioned to you his notion of a cropped mare, and that he intended to have a breed of them. He does not appear ever to have had possession, in a proper man-

Digitized by Google

Digitized by Google

Digitized by Google

ner, of those feelings which distinguish the rest of mankind. You have heard a witness say that he passed jokes amongst the servants as to checked aprons. That was mentioned incidentally only by one of the witnesses Wright produces; but I will produce several witnesses to you who will prove that he had a remarkable passion for a checked apron; he conceived that women were destined to wear check aprons for the pleasure of the other sex. If he were going about the fields, or the streets of Hornby, he would stop any woman he met, if she wore a checked apron, or if he saw any such apron hanging on a hedge, he would stand and contemplate it with the utmost pleasure and delight. A checked apron was like an *anodyne* to him, and on some occasions he would order it to be taken up to his bed-room, and he would follow it; on other occasions, he would take an opportunity of taking one away from the servants in the kitchen, and take it to his bed-room himself.

Gentlemen, you may perhaps remember a remarkable instance of a case of somewhat a similar sort—and we all know by experience that human nature is only known by example. The same sort of distaste and perverted passion occurred in the case of Lord Portsmouth; the investigation of which filled up the newspapers of the day for some time, and I have no doubt that it is in the recollection of the Learned Judge, that it was proved in the case of Lord Portsmouth, that he thought the most amusing thing a gentleman could do with a lady was to bleed her, and when he saw a lady who captivated him, he used to get a lancet for the purpose of bleeding her, and then he would bleed himself. He was of such an imbecile nature as made him appear like a perfect child, even at the age of forty. He had that remarkable and anomalous perversion of passion which is somewhat analogous to what you find in this unhappy gentleman, Mr. Marsden.

Lord Portsmouth performed almost all the transactions, and evinced, in other respects, almost all the usual affections of life. He sat at table, and received company. Mr. Justice Bayley, whose integrity and honour cannot be doubted, was a witness upon that inquiry. Mr. Justice Bayley had discharged him upon a writ of Habeas Corpus. He saw him very often in the Court at the Old Bailey, where he (Lord Portsmouth) took a delight in sitting to hear criminal trials, and he had dined at the table of the Judges, and with the Magistrates of the county; he talked and acted like any other of the persons present, upon trivial subjects, but when they came to enter upon any sound or serious conversations, his fits of delusion, or partial insanity, were evinced; it was then found that his mind was perfectly imbecile—but even in those conversations he far exceeded Marsden; that state of mind continued for several years, till at length a commission of lunacy was sued out against him, and he was declared unfit to manage his affairs. A gentleman, who has seen both Lord Portsmouth

Digitized by Google

and Mr. Marsden, will tell you that Lord Portsmouth could stand a more serious investigation than Mr. Marsden. That noble lord, even during his imbecility, was in the habit of entertaining noblemen, and attending the opera, the theatres, and other public places. He had all the exterior forms of politeness, civility, affability, and intelligence. He dined at public meetings, and at noblemen's houses; he drank healths, and even voted in the House of Lords. It was, however, found that he had so little power of intellect, and could so easily be controlled, that he permitted the adulterer of his wife to sleep in the same room, and even to lay a horsewhip over him to keep him quiet, while that adulterer was actually in his own bed with her; but still nothing was done to free him from that control. Those domestic scenes became known, and were received by his relatives with horror and disgust.

Now, Gentlemen, as I am upon this subject, I may state to you that there were also some scenes of horse-whipping in this case of Marsden's, by Wright. You will hear that Wright was not deficient in the use of that instrument, when his influence in other respects did not operate as a charm upon him, or when his orders were not instantly obeyed, without the necessity of using such discipline; but when he did so, that operated as the charm. I shall call some of the gentlemen who did dine there, and others who did not dine there; they will tell you the very apposite impressions which they received as to him, when compared with those you have already heard detailed by others. But I beg first to call your attention to a remark I made originally, which is this. A very slight conversation with any weak man would justify you in conceiving an impression that he is a man of weak intellect; but, in order to remove that, and to show whether he be a man of any capacity at all, we must form our opinion upon absolute facts. You must have other conversations, but of a different description, with him. I differ from the witness, Mr. Hailstone, who was examined yesterday.

I have a perfect regard for that gentleman in every other respect; but I must say, that his opinion, formed as it was, is worth nothing in this cause. He has dined in company with Marsden, and he has come away with the impression that Marsden was a kind and hospitable man (facts which I do not deny), but still, although he thought he was a weak man, he also thought him competent to make a will. I find fault with that evidence, because the moment you find that a man is weak in intellect or inferior in his powers of judgment, before you can draw the inference that he is competent, you must go further. You must investigate his intellect yet more, otherwise you are not justified in drawing your conclusion that he is competent to manage his own affairs. You must proceed gradually, and probe him, without drawing him out all at once upon matters of business. I do not deny that it is not pos-

Digitized by Google

Digitized by Google

Digitized by Google

sible he may justify the opinion you may have formed; but still there is a possibility that he might not. You must propose to him some facts upon which you can with certainty found your opinion. If you, in the first instance, form the conclusion that he is a weak man, you must carry your inquiry farther, and ascertain whether he himself can draw a rational conclusion or inference from some fixed data; but you cannot do that without stating some facts, to draw forth examples of his conversation. In this case I must say that the *onus probandi* is thrown upon the other side: it is for them to show that Marsden was competent to the discussion and transaction of grave and serious affairs. I do not deny that my friend has not, by some of his witnesses, proved that this individual was competent to his own affairs; but the evidence by which he proves it is fallacious. It amounts to nothing for a person to say "how do you do?" "Wright desires his compliments to you"—"this is a fine day"—"this a fine harvest"—or "what are the news stirring abroad?" All these things, even if he be competent, are not sufficient to raise any other impression than that he is of a weak mind, and frivolous in his conversation; but, at all events, they do not justify you in jumping, all at once, to the conclusion that he is competent to make a will. Those who wish to ascertain that fact, ought to carry their inquiries and investigation somewhat farther. That gentleman, Mr. Hailstone, is a lawyer—a man of fortune, of high character and respectability in the county of York. He tells you that he saw Mr. Marsden, upon several occasions, and had conversations with him; but what sort of conversations were they? Why, merely that sort of ordinary commonplace conversation which I have here described. There is one gentleman, the late Member for this town, Mr. Gladstone, whom I shall call before you. I mention him now, in order that I may dismiss this part of the subject which I have exemplified by Mr. Hailstone's evidence. Gentlemen, I dare say most of you know Mr. Gladstone as an eminent merchant in Liverpool; he has not only a great experience of mankind, but nature has endued him (and I know it of my own knowledge, for a long period) with as high an intellect as any man in Lancaster. When he was a candidate here, he was told that it would be necessary to go and canvass the gentry, and people of certain respectability, for their votes; and, amongst others, Mr. Marsden was mentioned by Mr. Wilson, the gentleman who told him to do so—though, I dare say, Mr. Wilson may have forgotten it. "You must go," says he, "and call on Mr. Marsden; but, remember, Wright is the man who has the control over him." I put that question to Mr. Wilson the day before yesterday, but he could not remember the circumstance of his saying so. I am really astonished how some people can forget some particular circumstances which one would think would make an impression upon them, and, more especially, that such a cir-

Digitized by Google

cumstance could be forgotten by any man in Lancaster, as that Hornby Castle was under the tyrannic thraldom of Wright, and that Marsden, of course, was completely under his control. I will prove to you that Mr. Gladstone took with him Mr. Ewart, a gentleman of Liverpool, well known in this county. They went to Hornby Castle, and breakfasted there, where they found Mr. Marsden and Mr. Wright: they found Marsden a perfect cypher, and they will tell you that Wright was every thing. From the conversation that took place, Mr. Gladstone will tell you, he drew an opinion that Marsden was perfectly incapable; that is the substance of Mr. Gladstone's evidence.

Gentlemen, I mean to introduce to your notice another person of high eminence in this county—an old highly esteemed friend of mine—I mean Lord Stanley. Lord Stanley was a candidate for this county, and represented it for some time in parliament. It was his duty, as a candidate, to call upon all the gentlemen of respectability in this county; amongst others, he called upon Mr. Marsden, and you shall hear from Lord Stanley himself what was the impression made upon his mind. It was this—that Marsden had a very small portion of intellect indeed: he cannot say that he had measured the exact proportion and extent of it, but he had no doubt whatever that Wright had the complete control and dominion over him; that, gentlemen, was Lord Stanley's opinion. This, you'll observe, was a matter of business—not a mere casual conversation, as in every one of the instances my friend gives. It was a canvass for an election; and the application was made to Marsden to support him by his interest. I leave Lord Stanley to say what he himself remembers of the conversation; the result of it, however, was, that he was perfectly satisfied that if he had Wright's interest, there would be no difficulty in getting Marsden's.

But, gentlemen, that is not all: I will call before you a gentleman who was a member for Westmoreland, Mr. Alexander Nowell, a gentleman of fortune in that county, and a man of high honor and character. He was one of the persons invited to dine with Mr. Marsden: he is a gentleman of much sagacity, and has seen much of the world. He will tell you he formed an opposite conclusion from those whom you have heard dined with him. His opinion was then, and is now, that Marsden was perfectly incapable of managing the ordinary concerns of life. Almost every witness has been asked that question: one witness answered it by asking what is meant by the ordinary concerns of life?" Some men may construe it in one way, and some in another. One man may say he certainly could put on his cloathes, bathe himself, take his breakfast, or when at dinner say 'I prefer soup to fish' or 'fish to soup' or 'fowl to roast beef' or "I prefer oyster sauce to caper sauce." If these be the ordinary concerns of life, then, I submit that a child could say this very same

Digitized by Google

Digitized by Google

Digitized by Google

thing. But the question is, what are the ordinary concerns of life, to a man of Marsden's station and rank of life? I do not mean that he should go and follow the plough, nor that he should go to negociate with farmers, or tenants, on all sorts of agricultural matters, as to which he must necessarily employ an agent; but, gentlemen, one singularity in the evidence of most of the witnesses you have heard, is, that they speak of the aid of an agent as actually being a qualification. The king himself, if of competent heart and intellect, could not manage the nation without an agent: so I should say a gentleman cannot manage his own family concerns without a butler, nor without the assistance of a cook, a servant, nor a washerwoman, but is that what is meant by the "ordinary affairs of life?" Certainly not; the real question here, is this—had Marsden the power to manage such affairs as any other gentleman of fortune, like himself, had the power, the inclination, the capability of performing? Did he order his own cloathes? I will prove to you he did not. I will call before you his tailor, and his shoemaker, who will tell you he did not, or that whenever he attempted to do so, he gave the most absurd orders imaginable. Then what are the other ordinary duties of life, that a gentleman of four thousand or five thousand a-year has to perform? There are many, but they are of a different description. You have it already proved that he was neither constable, churchwarden, nor overseer of the poor; neither a juryman, nor a magistrate, and far less a member of parliament. These are circumstances very remarkable, when you apply them to one of his high station and fortune. We then bring the question to this—was he fit for his situation in life? He ought to have been a fit man to perform some of the functions cast as a duty, or by act of parliament, upon gentlemen of his station. On the contrary, he was notorious for being very indolent—he did not like trouble. I am surprised at that, as it is so inconsistent with what he is stated, by the evidence adduced, to have performed. You have been told that he is supposed to have transacted more business—to have executed more deeds—and to have written more letters—than any one man, of a similar station in life, that could be selected throughout this whole county. I can hardly name to you any man in the kingdom that has executed so many deeds as those displayed on this occasion, executed by John Marsden. We ourselves must have had something to do with deeds, with contracts, and with bonds, and have talked to many about them, in order to understand them; but, gentlemen, did you ever hear of such an overwhelming number being executed by any one gentleman, of his station, in pursuance of the ordinary affairs of life? How can it be said then, that that man did not like trouble? How can it be said that he could not have been a magistrate, an overseer, or a juryman, And yet, with all this hatred or dread of trouble, he does not

Digitized by Google

even keep a clerk. No, gentlemen—quite the contrary; far from his not liking trouble, he himself, from his love of trouble, chooses to copy every letter he himself wrote and to endorse every letter he himself received. I venture to say that none of you, gentlemen, know an instance of a man, of any turn for business, who has so much of a turn for copying his letters, and even those letters upon the most trivial subjects. This conduct is quite inconsistent with the very case which my learned friend makes out, if it were the fact that Marsden actually wrote those letters, of his own mind, or made, of his own accord, those bargains that have been described. If he did, then, I say he was more a man of business than even the agent of Lord Derby, that noble lord himself, or any nobleman or gentleman of the hundreds of this county. "Oh, but," says my friend, "he was a shy man." One witness says "he always felt embarrassed to strangers," and Mr. Townley Clarkson says "he was remarkably courteous to strangers—he was very shy:" but, shy as he was, he had no objection, it is said, to interfere in county elections—he could be warm in politics, and a strenuous supporter of the church, the king, and the constitution; and, in furtherance of those principles, would he bring up his forces. I will prove to you, gentlemen, by his friends and his own agents, how he did this. Unless Wright had taken him by the arm, he had not the sense and intelligence to go to the place where he was to give a vote, nor did he know for whom he was to vote.

It is remarkable that there were but three instances given throughout his whole life, of any application being made to him, as to any business of a public nature; those were alluded to in two letters from James Sawrey, inviting him to elections, and one from Mr. Bickersteth, asking him to vote for a clerkship. Look at those letters, and you will find that they uniformly desire him to bring Wright with him. All these letters tell him to bring Wright with him—and for what purpose? Why—for no other purpose but to be his guide and director. As to this qualification to act as a trustee, which we have heard so pompously displayed, and as an important function to be performed, it was this, Mr. Bickersteth is desirous to carry a majority, by voting for a particular person to be a clerk to a turnpike trust; and knowing that Marsden had just then succeeded his brother, he had first to qualify as a trustee of a turnpike road, and then to vote. He carefully desires him to come with Wright, to qualify, so as to be entitled to give his vote. He accordingly goes with Wright; he qualifies, and gives his vote; and, lest he should be required to attend the meeting on any other subject, he immediately leaves the other trustees to manage all other matters as they pleased—and yet is this adduced as an act of most imporant business, by my learned friend the Attorney-General! As a public occupation devolving on gentlemen of landed property by act of parliament, or as a public

Digitized by Google

Digitized by Google

Digitized by Google

function, did he ever attend any one meeting of that trust, ever since that period? No, gentlemen, he did not. Did he ever write to them? No. You find no such letters, nor any attendance for any other public purpose whatever.

Now, let us take him again in early life. When at school he could make no proficiency; he was utterly incapable of being taught the most ordinary rules of arithmetic, such as boys of ten or twelve years of age comprehend. And, again, take him at the age of puberty, and, subsequently, you will find he was continually engaged in the most trifling pursuits, and frivolous conversations. Take him when grown to manhood, which is generally the age of energy and of vigour, both of body and mind; you find him completely fallen within the power and control, first, of an old woman, who was his aunt, and who, old as she was, carrying on an intimate connection with a menial servant—both of them then joining their influence together in controlling him, preventing him from exercising any power or energy he might possess, and instead of advising him not to part with his paternal estate, prompting him to sell it, and to purchase another larger estate, thereby involving him in a multiplicity of difficulties, which it was perfectly unnecessary for him to encounter. You then find that same menial servant becoming a member of his family; and, after he had got rid of one of his controllers, Mrs. Cookson, the same Mr. Wright, in his capacity of agent, or steward, introducing his wife and all his children with him into the Castle, upon the footing of perfect equality. This continued down to the day of his death; these parties having, during all that time, the most complete control, not only over his person, but over all his affairs. You do not find that Marsden ever gave any orders to servants, ordering anything of the tradesmen, interfering with any contract whatever, nor discharging any public function whatever.

Gentlemen, when you find all these facts and circumstances in combination, what should you say, *prima facie*, of such a man? Should you not expect the strongest evidence that he had capacity sufficient to dispose of his property? Is not the *onus probandi* thrown completely upon my friend? Certainly it is. Well then, what is the sort of evidence you would expect? Would you not expect some evidence, of more solidity in conversations, than upon mere matters of economy? Would you not expect some letters, upon more substantial and important topics, than mere complimentary occurrences? Would you not expect some evidence more applicable to the occasion than the trivial and frivolous remarks passing between the weakest of mankind, and his guests? Would you not expect from the evidence of persons who come forward to speak of his capacity, that they should be able to state that they put questions to him calculated to ascertain the competency of his mind and understanding—persons who could inform you what was the treatment he received from Wright, when they were

Digitized by Google

together in their domestic arrangements, and not merely when they were in company with strangers? Would you not expect that they should be able to tell you which of them, when in private life, appeared as master, and which of them as servant? As to how he was treated when in the company of strangers—that sort of evidence amounts to nothing; but the question is, how was he treated on the most ordinary occasions. Suppose, for instance, he should happen to have been too late for dinner. Could you suppose such a thing, as that Wright should sit down, and commence his meal before his master arrived? Could you suppose such a piece of consummate effrontery and boldness as that the servant should scold the master for having been too late of arrival at the appointed hour? Are not there instances tending to show how he was treated in his own house? Suppose even that he were under the greatest obligations to Wright (although I cannot see how it were so, unless it were, because he changed his family estate to another estate of equal value) but suppose it were so, does it follow that he, the master, the possessor of this large property, was to be treated by his own servant as a mere child in the nursery! in his own house too? Was it to be tolerated—was it just or reasonable that that agent, or upper servant, was to bring his wife and his whole family to sit at the table of his master, and at the same time occupying the best apartments in the castle, and sometimes associating with the lower orders of life, who were there introduced by them, so as to form part of Marsden's society—people not only below him in rank, but persons who felt, of themselves, that it was not proper that Marsden should associate with them; and yet they went there because they were invited by Wright and his family. Wright treated the house as his own; he used it, in every respect, as his own; while Marsden was ordered about, from room to room, just as a mere child. Under these circumstances, I say my friend was bound to shew the domestic economy of that house—to shew that Marsden was not treated as a subject of the nursery, but that the management of his own affairs, as to which they allege that he was competent—that is, suppose Marsden had chosen to say, "I do not like this old house—I will rebuild Hornby Castle," should Wright be allowed to have said to him "you shall not do so"? If so, then I say, Marsden must have been entirely under his control, and, therefore, Marsden had not a will of his own; for, gentlemen, be it remembered, you are here trying whether this will was Marsden's will, or whether it was a will concocted by Wright and Bleasdale. You hear it stated by some of the witnesses, that Marsden used to talk of improvements that were making, but who projected them? Have you any one individual brought to prove that Marsden projected them? Have you any one here to shew that if he said he should like to have this room or that room altered or improved, it was immediately effected, agreeably to his

Digitized by Google

Digitized by Google

Digitized by Google

orders? No, gentlemen, the witnesses, on the contrary, say that Marsden's name was never mentioned, nor was he ever referred to, in regard to any improvements or alterations going forward; he himself, in fact, had no will of his own, and consequently could not make a will—that I shall shew you more clearly by and by.

Gentlemen, there is one fact, of a nature such as almost to be conclusive of this cause, and which I may here notice. Consider the situation that Wright and Marsden stood in to each other; you have had a great many deeds adduced in evidence before you, but you have had no proof of one single deed having ever been executed by Marsden, except in the presence of Wright, as his adviser. Where was the invariable necessity of this, if Marsden were competent even to execute that which had been previously concerted? Mr. Hailstone has not proved that Marsden ever executed any deed without Wright himself being present—no, not one. I will shew you, by one of Dowbiggin's clerks, how they were to be executed, from the directions given by Dowbiggin. I will shew you whether Dowbiggin thought Marsden or Wright was the master. No one was shewn into Marsden's room—whatever mind Marsden was of, he was not consulted; if Wright thought any deed was proper to be executed, he would make Marsden sign it, by merely laying it before him, and desiring him to do so. You have heard it given in evidence, that a person of the name of George Smith was thirty years living in Hornby Castle, as a clerk to Wright; that he wrote a beautiful hand; and I am warranted in saying, even from Mr. Sharp's evidence, that he Smith, had an office in the castle, that he slept there, and, even now, is in Wright's service. This person, Smith, we have understood was at York during the trial of the issue, but was sent away without being examined; and although he be still in Wright's service, you find they dare not examine him upon this occasion. What did he do? He kept the accounts; of course knew every thing that was going on, and, to be sure, the accounts must have been voluminous. Now, gentlemen, have the goodness to consider in your own minds whether this remark be worthy of attention—here is an estate worth upwards of £4,000 a year belonging to a man who never made a contract with a farmer or tenant, in his life, and who has not been shewn to have been personally present when any was made, nor has he been proved to have conversed with a farmer or a tenant during all his days. Not one of those individuals has been called before you, who can say he ever saw him, or held any converse with him—no one has been called to show that he ever read over his contract, nor to shew that he knew what rent was paid, nor what number of acres any particular tenant was to possess. This Mr. Wright has a clerk, who has received the whole of the rents of this large estate for the last thirty years; while Marsden, the proprietor of the estate, has had

Digitized by Google

no account kept in his name at a banker's at all—neither has he had any cash of his own, except what his breeches' pocket contained; and from the evidence you have already had, it appears that that was little or nothing. With whom has this clerk settled accounts? What does that clerk know about the state of the accounts, and why is he not called here to explain them? Has Wright condescended to proffer any one book of accounts he kept? Has he shewn any regular system of auditing those accounts? Has he shewn he had even submitted any account whatever to Dowbiggin or Sharp, or any one of Marsden's attorneys? None whatever. Is not this a strange proceeding? Do you know of any instance of a country gentleman not having a banker that he could draw upon, at his own pleasure—not keeping any banking account, in his own name—having no account, even of his own agent, presented to him, to shew his intromissions with his property? Not even one solitary instance is given, of any account being shewn to him, nor of his ever being consulted upon the subject of accounts, for the long period of forty years—no, nor for fifty years, taking him from the time of his living at Wennington Hall. You have uniformly one man employed;—letting all his farms—making contracts with all his tenants—receiving all his rents, either by himself or by his clerk—paying money into the hands of bankers—and keeping an account with them, in his own name. You have heard of all this—but you have not had one single account, from the first to the last, presented to you, as passing between this agent and Marsden himself. You have heard of a clerk of that agent, who has kept his accounts; but still, you have not that clerk produced before you. Could not this man, Smith, have been called, to shew that at some period of the year he had submitted those accounts to Mr. Marsden? No, gentlemen; but you have had one solitary instance given in evidence before you, that Marsden got a receipt for five guineas, and begged Wright to add one guinea to it. That evidence was given to shew he was very particular about a guinea, and that he did not like to be cheated—while, at the same time, Wright could, on any occasion, when it suited him, make him execute deeds—he had only to say, "here, sir, is a deed," or "here is a bond," or "here is an account, by which you have £5000. in your favour; sign it, so as to give the party a discharge;" you have no account of that kind presented to you, shewing the fair consideration. All that you know of his money transactions is, that he signs a receipt for five guineas, with Wright at his elbow, as usual; but you have no book of accounts, neither have you any receipts for rent. Where are those books—those accounts and receipts? Why are they not here for inspection, to ascertain that they are fair? Has Marsden ever seen them? You have no witness called to speak even to that point—not one—neither Baron Bolland, nor Mr. Lushington, nor his brother, the Colonel, nor any of the

Digitized by Google

Digitized by Google

Digitized by Google

clergymen, or other gentlemen called, have told you that they ever heard Marsden talk of these matters, nor that any one else broached the subject. All that they can speak of is, the circumstance of having dined with him, and of having heard him talk upon frivolous subjects. I put it to you that a man must have lost his common sense, if, after being made acquainted with all these circumstances, he does not see plainly that Wright had the complete control and management of Marsden, personally, as well as of his property, in every sense of the word, so far as they could be managed. Is not that evidence both of control and a want of sanity? I should wish to know, if Wright had been a purchaser, and Marsden had sold the estate to him, whether a court of equity, under such circumstances, would not have interfered, so as not to allow such a purchase to be carried into effect? Certainly, it would not have allowed it. What will you say, gentlemen, when you find that Wright is here in any instance a grantee, without any consideration at all? You will have it in the parole evidence, that of Salter's Hall estate, (the titles of which are not produced here, but which cost £6000.) that of that Marsden has made a present to John Marsden Wright; but of this gift Marsden knew nothing, unless he had consulted Wright about it. I should like to know, if Mr. Marsden had been aware of what he was about, how Wright could have dared to advise him to do this; but, gentlemen, it does not rest there; I can only judge by what has been given to me. You have got evidence as to the purchase of Hornby estate for £53,000; but it seems that some purchases were made afterwards. You have got the value of the Wennington estate put down at £51,000. In 1787, and afterwards, there were sold, at different periods, some small portions, or parcels, of that property. I dare say they sold pretty well. We have struggled in vain to get one of the deeds produced; and all that has been ascertained is, that Mr. Lister gave for Wennington Hall £27,000. We have not been favoured with the accounts, but let us see what the result probably is. Whatever Wennington Hall sold for, yet it appears there were mortgages to raise money upon the Hornby estate. I have got evidence of debts to the amount of very nearly £50,000. I have got £27,000 for the portion of Wennington Hall that was sold to Mr. Lister, making together £77,000. We have also £13,000 for the mortgage to Bleasdale, which brings the whole to about £90,000. Now, I ask, what has become of all this money received? Where are the accounts of it, settled and signed? Where is Mr. Marsden's signature to such accounts? Why have they not called Wright's clerk, to prove that Marsden had an opportunity, as well as Wright, to look at them? Here is this immense amount of money, partly procured from the Wennington estate, and partly borrowed on the other estate purchased, of all which there ought to have been some accounts produced, and signed on both sides. Besides this, there has been a large

Digitized by Google

amount of money, borrowed on various bonds, amounting, I believe, in all, to between £22,000. and £23,000. Have those bonds been paid off? Of that no evidence has been given. I do not take that amount from the other mass, but, I ask, what has become of it all?

Gentlemen, Mr. Wright has lived at Hornby Castle, as if it were his own; he has invited his own guests, and has imported there his own family; he has had a large family, who have been brought up there, and they have all of them been well educated; and yet you do not hear it stated what was the amount of the actual salary he ever received from Mr. Marsden. All has been a system of seclusion; but this I can tell you, that Wright has now acquired considerable landed estates, besides having amassed much personal property, arising, no doubt, from those transactions of which no account has been given. Wright is now a man of very large property. These are things which startle us in a cause of this sort, and call loudly for investigation. Is this a case in which a jury ought to be satisfied merely with this statement, to shew that the man to whom all that property originally belonged, was a man of capacity and sound judgment—able and competent to manage his own affairs—to understand, and to transact, that great variety of business, in which he seems to have been involved? You have had a great boast made, as to the respectability of the parties, and the witnesses to those mortgage deeds, and other securities—but you want the most effectual of all evidence to shew the real state of his understanding. Let them produce the accounts, to shew on what side the balance lay, and what has become of all this money. Here have been no such accounts produced to you; not that it has been alleged that Wright never kept accounts with Marsden, but, if he did, why should he not shew them, so as to let us know how the matter stood? If he do not do so, is not that a proof that he was the controller of Marsden, who thus has assigned his property to him, without a valuable consideration? If they were real, and not fictitious, accounts, why have they not been produced, even were it for no other purpose but to shew Wright's integrity, as well as Marsden's capacity? Are you not entitled to suppose, as he does not produce them, that he well knew he dared not produce them? There is not a man amongst all the witnesses who have made their appearance here, who knows anything at all material concerning the internal events of Hornby Castle; but every one must feel the justice of the observation, that Wright must have had the entire control and management, and that he seems to have conducted all those extensive affairs and transactions which related to Marsden's property, just as he pleased; and yet, Wright, having a clerk, who is acknowledged to have kept the accounts, dare not produce him before an honest and impartial jury. Am I not, then, justified, under all these circumstances, to assert,

Digitized by Google

Digitized by Google

Digitized by Google

before this tribunal, that Wright had the complete control of Marsden's mind, as well as of his property?

Now, gentlemen, suppose that my friend had actually produced, in his candour and integrity, the annual accounts that were made out from year to year, and if we had found, in one account, some very extraordinary impositions upon Marsden—suppose, for instance, Wright had put to his own credit many payments he had received of his master's rents, and that he had made a delusive account of the funds on the other side, or the manner in which he had placed it or applied it—would you not have inferred that Marsden had been imposed upon? and would you not have conceived that Marsden was so imposed upon, because his judgment and capacity were not above those of childhood, and that Wright could, in consequence of that imbecility, have passed any account he chose, or any fictitious story his fancy might dictate? If that be so, or if it be possible, or probable, has Wright any candor or fairness in keeping back all those accounts from you? If his conduct were fair and honourable, I should think it would have been his most anxious wish and desire to have produced them. I cannot see how any judge or jury in this extraordinary case—how, under the whole circumstances of it—any one can by possibility come to any other conclusion than that Marsden was of incompetent mind and understanding, in having permitted himself so to be imposed upon by his own bailiff, in settling his accounts during the long period of forty years together, while that bailiff or agent does not produce a single account, to satisfy you of the fairness and integrity of his conduct. I must say, whatever may be my friend's remarks by and by, if those accounts had been brought before an intelligent mind, or before a person competent to understand what he was about, no verdict would be more satisfactory than that which should establish them.

Gentlemen, I am now to state to you a fact which I consider of great importance in this cause, because it does relate to a transaction of business. I see sitting near me a gentlemen of the profession; I mean Mr. Hartley. I am afraid that Hartley and I remember each other too long (or perhaps a greater number of years than either of us may like to count)—not that we dislike to see each other, but we may not like to trace back our days to childhood. He has been a respectable solicitor ever since I knew this place, and the neighbouring county; Mr. Hartley, it appears from the evidence, was one of the solicitors who was concerned for some of the persons who purchased a detached part of the Wennington Hall property; there were two or three other solicitors whose clients (through their solicitors' intervention, along with Wright or Barrow, as acting for Marsden) had made separate contracts for the purchases of certain parts of that same estate. The solicitors for the parties, were all appointed to come upon a particular day, and pay their money at Wenning-

Digitized by Google

ton Hall. Some of the clients were protected by Mr. Hartley, my friend. There was also a numerous body of witnesses to attest the deeds to be executed upon that occasion. There were accordingly met, besides the usual number of the family, Mrs. Cookson, Mr. Marsden, and Mr. Wright, and one or two others, and those attorneys besides. Amongst the gentlemen assembled upon that occasion was also Mr. Bolton, who lived at Colne, in the county of Lancaster—a gentleman I can never speak of without the highest testimony of respect. I remember the late Lord Ellenborough saying, it was astonishing that a man of Mr. Bolton's talents, and knowledge of the law, should be contented to live at so obscure a village as Colne in Lancashire, as he (his lordship) was sensible that no gentleman excelled him, in knowledge and capacity in all matters of law. Lord Ellenborough was, at that time, leader of the bar on the northern circuit. Now, gentlemen, what I was going to state is this; Mr. Bolton was amongst the number of those invited to dine at Wennington Hall. Some of these gentlemen, the solicitors, had come prepared to pay the purchase-money, when those deeds were to be executed; the business was delayed till after dinner. Wright and Cookson, as I have stated, were at the dinner, and James Barrow, the counsel, was likewise there. He was then an attorney. During the dinner every thing was pleasant. Marsden behaved perfectly well, and, like a gentleman of hospitality, very properly asked each of them to drink wine with him. At that time, none of them saw any thing particular in his conduct; nothing took place that could betray any want of capacity or understanding; he, however, said very little then; nothing struck them as being wrong during dinner-time. Immediately after dinner, Mrs. Cookson, Mr. Wright, and Mr. Barrow, withdrew, upon some matter of business, and Marsden was desired to entertain the gentlemen at table; he accordingly went into the chair, and no sooner was he seated, than he began to push about the bottle, as he generally did, whenever he could, and whenever Wright was absent; he pushed about the bottle, and the first toast he proposed was—"Wright and Cookson—may they live a thousand years!" The gentlemen present thought it somewhat odd that he should give such a toast, in that mode and with that accompaniment; but they were still more astonished, when, upon being requested to fill their glasses again, he said, "Now, gentlemen, I will give you another toast,—'*Mrs. Cookson and Mr. Wright—may they live a thousand years!*'"—which was the same toast over again, with the single exception of adding,—"*Mrs.*" and "*Mr.*" to their names. In the meantime, the gentlemen present drank their wine very fast, having their business to transact without loss of time; but Marsden's conduct became so strange, that they began to feel somewhat alarmed about it. They had not seen him previously to their having made the contracts for their cli-

Digitized by Google

Digitized by Google

Digitized by Google

ents, and, upon retiring from the table, they immediately saw Barrow and Wright, to whom they intimated that they thought it right to say that there was something so extraordinary in Marsden's conduct, that they were led to doubt whether they ought, on behalf of their clients, to press him to complete their contracts. Upon this Barrow said,—" Gentlemen, you run no risk, as he has purchased Hornby Castle, your client's money is to be laid out immediately upon landed property; your clients are perfectly safe—your only risk would have been, if you had imagined the money was to have been squandered away; but the fact is, he, having sold Wennington Hall, is only borrowing it for the purpose of paying for another purchase of real property, and you cannot but feel assured that each of you must afterwards have your money, or the estate will be answerable for it." The gentlemen, upon this, retired into another room, to consult together upon the subject; and Mr. Bolton, who was concerned as a lawyer for some of the parties, took that statement of Barrow's into consideration, and was of opinion that they were safe after that statement of Barrow; and in that he was joined by the rest, who all thought that, under the circumstances stated, they were safe; that Barrow was right in his statement, as it was money raised to purchase immediately other lands. Mr. Bolton thought that they ran no risk, provided, in order to verify such representation, Wright, Cookson, and Barrow, should be witnesses to the deeds, so that they should bear evidence, as to the assurance made at the time, that there was no intention to negative it on the part of Marsden. The only suspicion that had arisen amongst some of them at first was, that the purchaser had given an under price for it, or had been in collusion with some one, unknown to Marsden, to undo the contract, so that the property might have been in danger; for the friends of Marsden might have filed a bill to set it aside, but they thought there was no danger, after Barrow's assurances, and so the transaction was accordingly effected. Mr. Hartley, who was then present, is still living, and you will hear his testimony upon the subject. Every attorney, who was there, had his deed attested, as stated; and some of those deeds will be exhibited to you, to confirm the truth of Hartley's statement.

Now, gentlemen, you will understand me as not detailing the particulars of the whole evidence I shall lay before you; as I wish not to trouble you with hearing it twice. My learned friend has given you a class of *letters*, which were rejected the last time, and his lordship has a note of it: those are letters of persons who are dead; they are merely complimentary letters, produced to show how those persons treated him. I beg, gentlemen, just to remark upon this, that such evidence is extremely fallacious, and not to be relied upon—and I will tell you why; one of those eltters in evidence is from a gentleman who stated that the Bishop of Chester was very sensible of the hospitality he received from

Digitized by Google

Marsden, and he felt respect and gratitude for it. That Bishop of Chester is now alive, and is now Bishop of Bath and Wells, but it is evident they dare not call him to prove the facts of that letter from Mr. Armitstead to Mr. Marsden. Now, you are to take that letter, upon which my friend put a strong emphasis, as to the bishop of Chester feeling great delight at the hospitality he received. I conceive that all those letters of compliment stand upon very doubtful ground; I will tell you why. Ellershaw's letter is merely complimentary, upon taking leave of the chapelry of Hornby, to which he had been appointed by Marsden; for as he (Marsden) was not under a commission of lunacy, he was made to perform those functions which suited the purpose of others. He must have appointed and presented some individuals to livings. Ellershaw had lived in Hornby, and had frequently visited Hornby Castle, where he had received this man's hospitality, besides having, through him, received this benefice. He accordingly wrote to take leave of him. Ellershaw is dead; and my friend produces this letter to show that he treated him as a sound man, as he says "you never saw such a person writing such a letter to an idiot." But, gentlemen, you will observe, that he could not have written to him at all, without expressing civility. I will, however, prove that Ellershaw treated him as a child—with kindness, but as one whom he did not think was competent. When they were playing at whist with him upon a cloth in the carriage, spread out upon Mrs. Cookson's knees, he was perfectly unable to join them. Upon another occasion (I believe at Ellershaw's) he was set down to play a penny game with children, when others in company were playing at whist. It is a dangerous thing to write a civil letter to such a man, even in taking leave of him, if my friend is to say that that is a proof of his competency of mind. I have proof, however, of Ellershaw's real opinion of him.

Then we have proof of Croft writing letters to him, but not of Croft writing letters to Wright. It is plain that Croft and Marsden had some accounts to settle; in those letters they are discussing the subject, and considering it a little. Now, I have just as much right to prove what Croft said of him, as my friend has to adduce his letters.

GURNEY, B.—You mean certain declarations that were made by another?

Sir J. SCARLETT.—Yes; my Lord.

ATTORNEY-GENERAL.—I will not object now.

Sir J. SCARLETT.—I will prove, that from his writing such letters, Marsden was certainly of weak mind. Why was he writing such letters? They were merely in answer to letters from those who had received compliments and benefits from him; but the fact is, Croft had declared, as to Marsden, "What God had not put into him, man could not get out of him,"—in allusion to his

Digitized by Google

Digitized by Google

Digitized by Google

want of intellect, but still, of course, he received the compliments of those who had been assisted by him, and, having received civil expressions, he was made to return similar expressions. For what other reason could Croft write to him, but because he had acquired a benefit from him? He, having once written to him, created a correspondence.

Now, gentlemen, I am about to give you the history of the connexion of Wright and Marsden with Mr. Bleasdale. Mr. Bleasdale's evidence has been read to you, but I am afraid I must trouble you with a recurrence to some parts of it. I hear it said that Mr. Bleasdale was then an eminent attorney in London; I shall not say any thing upon the subject, as Mr. Bleasdale has, since the first trial, been removed from being a living witness giving his testimony before you. But, gentlemen, before I advert to the history of Mr. Bleasdale, I had perhaps better take this opportunity of stating what I apprehend the law requires, to make a man competent, and to be of sound and disposing mind and memory, so as to make his will; and as I do not wish to hazard any proposition I may state upon that point, without having any authority at all to lay before you, I prefer giving you the words of a learned and eminent judge, founded upon decided cases. I shall read them to you, instead of offering them as my own sentiments. Of course, cases of this sort vary in their circumstances, but the principles of law and reason are the same, as applied to all such cases. Here is a case, decided by that learned judge, Sir John Nicholl, and a more correct, equal, and cool tempered judge, never ornamented the place which he now fills—the Ecclesiastical Court—which is a court chiefly occupied with the consideration of wills. This is a case which occurred in the year 1828, and the question was about the will of a married woman; her name was Harding; and it is in Haggard's reports, vol. 2nd, entitled Marsh, Tyrrell, and Harding. I shall, in the first place only state, generally, part of the circumstances of that case. The lady, who was advanced in life, had, by her marriage settlement, a power to dispose of her own fortune, independently of her husband; she had made a will, in which she had made a provision to her husband, and then she made one afterwards, in favor of a Mr. Marsh, who, before she died, had become bankrupt; she afterwards altered her will, or made another will, leaving the property to her husband. Upon this, Marsh instituted a suit in the Ecclesiastical Court, for the purpose of setting it aside, alleging that she was then of weak intellect, and that the husband had, by his influence and control, caused it to be made, when she was recovering from an illness, and, therefore, it was not her own will, but the will of another person. The husband had employed a solicitor of the greatest eminence in London, a Mr. Tyrrell, who was then the City Remembrancer. (Mr. Bleasdale cannot surely, notwithstanding all

Digitized by Google

that has been stated of him, be put beyond that gentleman in point of respectability) Mr. Tyrrell, being introduced to the lady, and observing that she was just recovering from an illness which had affected her mind, wished, in the first place, to employ an eminent medical man, to say if she were competent to do what was proposed. Mr. Tyrrell's own brother was the eminent professional gentleman at first applied to; he accordingly saw the lady, and thought she was competent, and perfectly a free agent—but he advised his brother (as he was a surgeon, and as this was supposed to be a case of a disease of the mind, and not of bodily complaint) rather to resort to some medical gentleman who was in the habit of considering mental complaints, more than he himself was. He accordingly recommended Dr. Burrowes. The lady had a favourite maid, whom Dr. Burrowes questioned about her mistress, and from what she said, as well as from his own observations, he declared he had no reason to doubt the lady's competency to make a will. That was the very day of her signing the will. The question upon which the will turned was, whether or not, the husband had satisfied the judge whether it were or not made under his control and influence. That depended upon whether the weakness of the mind had created incompetency, or whether it had subjected her to such control as that she had consented to all her original intentions, through the importunity of her husband.

Gentlemen,—I will read to you the opinion of Sir John Nicholl in that case of Marsh *v.* Tyrrell and Harding, in 2nd Haggard's Reports, having shewn you, from the previous statement of facts, how that case applies to the present one. I do not mean to read the more lengthened statement of facts, as they appear in the commencement of the judgment, as some of them do not belong to this case. On the occasion of the application to set aside that will, after hearing the argument, Sir John Nicholl said, " It is a great, but not an uncommon error, to suppose that because a person can understand a question put to him, and can give a rational answer to such question, he is of perfect sound mind, and is capable of making a will for any purpose whatever, whereas the rule of law (and it is the rule of common sense) is far otherwise. The competency of the mind must be judged of by the nature of the act to be done, and from a consideration of all the circumstances of the case. In Combe's case, (in Moore's Report's at common law, 759), the rule is laid down in these words,—' It was agreed by the Judges that sane memory for the making of a will is not at all times, when the party can answer to any thing with sense, but he ought to have judgment to discern, and to be of perfect memory, otherwise, the will is void.' It is not answering that she had been round Clapham Common, or that her house was leasehold property; or the like, even if the questions were answered correctly, and the husband had not been present, that

Digitized by Google

Digitized by Google

Digitized by Google

would be sufficient in the present case. So, again, in the Marquis of Winchester's case (6th Report, 23), it is stated, " By the law it is not sufficient that the testator be of memory and power to make his will by answering familiar and usual questions, but he ought to have a disposing memory, so as to be able to make a disposition of his estate with understanding and reason."

Now, Gentlemen, I will satisfy you, before I have done, that this will is not consistent with understanding and reason. Sir John Nicholl goes on to say, " To support, then, such a complete co-operation in the testamentary dispositions of the deceased, it was necessary to shew that she had recollection of what the former disposition was—even supposing there were no grounds to suspect a mere tutored acquiescence under the influence of the husband. The influence of the husband, however, is much more readily inferred to have had its effect, than the importunity of the wife, and yet it is laid down—' if a man make a will in his sickness, by the over importunities of his wife,' to the end that he may be quiet, this shall be said to be a will made by restraint, and shall not be good." That is so laid down in Viner's Abridgment, 16, 6—No. 8.

There was also the famous case that originated in Ireland, as to the will of Lord Trimblestown, which case came to the House of Lords, and was conducted by an eminent lawyer, Lord Plunkett, who supported the case of Lady Trimbestown, where it was alleged that the will made in favour of her ladyship was obtained by importunity, and that will was set aside. A new trial was ordered by the House of Lords, and it was tried afterwards in Ireland; abundance of evidence was given, and I believe Lady Trimblestown acquitted herself of the extent of importunity ascribed to her; but still, in the result the will was set aside. Swinburne says—" In respect of restraint, whereof no certain rule can be delivered, as it is left to the discrimination of the judge, who is to consider all the circumstances." That is in part 7, sec. 2. That is to say, it is to be left to the judge, when the case is in the Ecclesiastical Court; but you, gentlemen, are the judges of the fact, in this case.

Sir John Nicholl further says, " In my judgment, in the present case the circumstances are quite sufficient, prior to the application of the husband to Mr. Edward Tyrrell, and quite sufficient from his presence upon all subsequent occasions, to require that he should afford the most satisfactory proof that the deceased was not a mere unresisting instrument in his hand, so taught, tutored, and impressed, as to say and do all that Mr. Edward Tyrrell states took place."

Now, I put the present case in this way. I shew that Wright had the complete control of Marsden, and likewise of his property, during all the years in which he was his steward. My learned friend, the Attorney-General, has always put his case to

Digitized by Google

you as if Marsden had always been actually treated as a man of sound mind. Here Mrs. Cookson and Wright thought it fit to avoid a commission of lunacy, to make this man sell one estate and purchase another, which he was not competent to do. His doing that, and executing a great number of deeds, and writing many letters resulting from these transactions, afford no evidence of his competency.

Now, gentlemen, I come to that part of the case which relates to the conduct of Bleasdale, the attorney, who prepared this will. His examination has been read to you. He exhibited, in that examination, undoubtedly very considerable dexterity, shrewdness, and talent. He was aware of every point that could be touched upon, and was prepared with his answer. He saw, with the utmost distinctness, the object of every question, and when he found the question pressed upon him, he evaded it. I must say, gentlemen, that one of the complaints I have to make to the Jury who tried that issue, is, that they did not see how the questions were evaded—and the witness received a degree of protection which I, for one, think he was not entitled to from the bench. In the first place, he stated, in order to elude any supposition that he had not been previously acquainted with Wright, nor in connivance with him to make a will for Marsden, that he had known Marsden at Wennington Hall, but, as to Wright, he never knew him till he was at Hornby. Secondly, he stated that he never made a will till after the death of James Barrow, who made the former wills, and who died in 1798. The Judge helped him to that date.

He said that Barrow had made all his former wills, but that Barrow's last will was the same in its effect, as this one, except in regard to some provisions in favor of the Tathams, who were cut out, when it was said "There go the Tathams"—but that the only alteration he made in the substance of the disposition, was that he had put in Wright as a trustee, in order to cover some extra property, as it occurred to his sagacity that it would be necessary to make Wright a trustee, but still he had the art to shift that from himself, as if he did not do it of his own accord, and therefore he said that that created some alterations, but in those alterations, he had pursued the plan adopted in what are called the Richmond wills or conveyances, thereby leading the jury to suppose that he himself did not do it. Gentlemen, I will prove to you, by his own accounts, that he had made a will for Marsden in 1795, and I believe he had even made one in 1792. Now, the accounts of Bleasdale himself will probably show that in 1788, Wright knew Mr. Bleasdale, as he sent his compliments to him. It is proved that a client of Bleasdale's lent Marsden £10,000, at an early period. Those facts he denied, and also stated that he never made a will in London. Now, I will prove to you that he did, and that he has charged for making wills even in 1792, 1795, and 1798. And although he said he had never made a will in

Digitized by Google

Digitized by Google

Digitized by Google

London, yet I have one of the witnesses in court to a will made in one of those years. He said that he had never, till he came to Wenning Cottage, in 1799, gone to Hornby Castle, and that he had no particular connexion with Wright, till that period—whereas I will show that he knew him intimately before that time. Besides this, I will prove a remarkable circumstance, as disclosed in this letter, which I will read to you; it is from Mr. Wright, to Mr. James Barrow, dated "Wennington Hall, 6th July, 1788."

I shall by and by produce the original letter. He says—

Wennington Hall 6th July 1788

DEAR SIR—I was favored with yours by last night's post which I own surprised ne much to see it dated at Manchester so late at night still more so to hear you were on your journey to a place you so little expected the last time I had the pleasure to see you. I must own it gives me pleasure to hear that you are gone to Town.

Now, you will find that phrase frequently occurring in Marsden's correspondence afterwards. Then he goes on to say—

"as it will give me an opertunity of troubling you with a little bussines which I think will never be brought to a conclution without you do it; that is to get the Costs taxed whilst you are in Town as the Award in our favor will be of little service if the Costs is not paid If you think it proper to mention to Greene that the plans of the Hornby Estate wou'd be of Infinite service to Mr. Marsden whilst he is letting the Estate as likewise Mr Gray valaiation shou'd they think proper to give him liberty to give it to Mr. Marsden The discharges are not yet come down and I am afraid least they shou'd be sent too late for the tenants to Quit this year If what I have wrote on the other sid meets with your aprobation and you have time to do it the rest I will leave entierly to your self as you can judge the best what to do and what to leave undon in those matters Mr. Marsden and Mrs. Cookson desires their best Compliments to you and you Brother to whome I desire to add mine and likewise to Mr Bleasdale.

I remain, Dear Sir your
Most obdt. and very Hble Servt.
GEO. WRIGHT

P. S. please to ask Mr Greene if he has received from Hartley the £35 which he left unpaid of Kayleys purchase money

James Barrow Esq.
No. 1 Lambs Buildings
Inner Temple
London

That shows he was acquainted with him in 1788, as he here sends his compliments to him.

Gentlemen, there is another letter I have got here, addressed by Wright to Bleasdale, dated, "Hornby Castle, 6th January, 1807," in which he says—

Hornby Castle 6th Jany 1807

DEAR SIR—I was sorry I could not send you you some Game against Xmas, the wether was so very severe there was no geting any. I have sent a little in the Box with this and hope you will receive it safe.

Lord Lonsdale's Agent called upon me a few days ago wishing to purchase the Small Estate of Miss Tatham's near Lowther, which you may recollect we saw, as we were, tavelling frum Askham, to Penrith. I think his Lordship wil give a

Digitized by Google

good price for it—I wish to have your sentiments upon it and whether you would advise Miss Tatham to sell by private or public—Your answer when convenient will much oblige

Dear Sir
Yours very sincerely
GEO: WRIGHT.

The family at the Castle begs to be kindly remembered to you
Giles Bleasdale Esq
Hatton Court, Threadneedle Street, London

Now, here is another letter, dated, "Hornby Castle, August 4, 1809," from Wright to Bleasdale, in which he says—

"Hornby Castle Augt. 4th, 1809

"My Dear Sir,—I was favored with your letter and the Opinion which I got at Lancaster yesterday.

(I read this letter to you, to shew you whether Wright or Marsden was the party who managed the affairs.)—

Mr. Sharp met the council at Nucastle and he said that he had wrote to you from that place respecting the Cause—They had offered to take the admittan each party paying their own Costs which I believe Mr Dowbiggin has agreed to so there is an end of it—I find that the Lawyers are desirous of having the other put off till the next Assizes

(Who is to judge of that ?)—He goes on to say—

which I have lef entirely to you Gentlemen of the Law I don't believe that Londmoneagle ever Forfeited the Estate I rather suppose that he was once fined a certain sum of money

I feel very anxious for your health and am sorry you should have had so much trouble with our business I shall be extremely happy to see you at the Castle and I hope you will make it your home as long as you can and it will give me pleasure to meet you any where on the road within 50 miles of home as I can go with my Gigg that distance in a day very well

Now, here he invites him to Hornby Castle, as if it were his own Castle, and not mentioning Marsden at all. He says—"I shall be extremely happy to see you at the castle, and I hope you will make it your home as long as you can." Then he goes on farther to say—

Should one of your Clerks be going through Ludgate Street I will thank you to let him call upon Wilkinson the Gunmaker and desire him to send my Guns —The family at the Castle beg their best respects to you.

I am My dear Sir very sincerely yours
GEO. WRIGHT.

To Giles Bleasdale, Esqr.
Hatton Court, Threadneedle Street, London.

Then here is another letter from Wright to Bleasdale, dated, "Hornby Castle, 1st September 1809," in which he says—

Hornby Castle 1st Septr. 1809

Dear Sir —I have just got two Brace of Moor Game which were killed to day I hope you will receive them safe There will nothing give me greater

Digitized by Google

Digitized by Google

Digitized by Google

pleasure then to see you at Hornby Castle. If I could know what day you would be at Lancaster I should be happy to meet you there

I am Dear Sir Very faithfully yours

GEO. WRIGHT.

(addressed)
Giles Bleasdale Esqr Hatton Court
Threadneedle Street London

So that he here again invites him to Hornby Castle, not treating it all as Marsden's, but as his (Wright's) own residence.

Now, gentlemen, I should here tell you, that, in 1808, Miss Tatham made her will, (Mrs. Cookson having died in 1791, some time before Wright's marriage, for he did not marry while she lived ;) in 1808 Miss Tatham made her will in favour of Wright; I do not know for certain who prepared it, but it is attested by Giles Bleasdale ; as also, a codicil on the 10th of October, 1809; and I think they are both in Bleasdale's own hand-writing. In that will she left all her property, except £100., to Wright.

I have read a letter, which showed that Bleasdale was expected at Hornby, and it was just about that period. It appears that Bleasdale had been there, and had gone back to town ; but he had taken care to inform Wright of the kind act he had done for him, as appears by Wright's letter to him, acknowledging it; and that act is supposed to have been the writing the codicil to Miss Tatham's will. The alteration made by it was to give "the legacy of £50, lately bequeathed by my aunt, Mrs. Alicia Tatham, unto Mrs. Wright, wife of George Wright, Esq. my executor. Elizabeth Tatham."

Then here is a letter from Wright to Bleasdale, dated Hornby Castle, 6th December, 1809, in which he says—

Hornby Castle 6th Decr. 1809

My dear Sir—I received both your obliging Letters I did not answer them sooner as I wished to give you an account of the arrival of your most bountiful present to Eliza, which came here by the carrier on Saturday evening in as good order as could be expected from bad packing, there is very little damage done but what one of Mr. Gillow's men can repair with a little glue.

I feel myself under greater obligations to you then any person living & you are still laying me under greater every day; and I shall never be able to make any return—I mean to accep you young Cow & Calf as it will give you pleasure to see them.—I must insist upon selling the Red Scott and placing the amount to your credit

Miss Tatham died on the 24th Novr. and was interred at Lancaster the week following

I found the Will as you mentioned and am at a loss what to do, whether to administer to her effect, or not; as I find from Mr. Dowbiggin there will be some difficulty in getting the business settled in Chancery, and the friends of Shuttleworth will give me all the trouble the cann.

Upon enquiry I find the Danby rents has been regularly received by a man at Danby and they are now in his hands, and I am afraid he will not part with them without some trouble,—The Leases for the Rent are in the hands of Mr. Cross of Preston one of Shuttleworths Assignes and he would not give them up when Mr. Dowbiggin was there a little before Miss Tathams death, I shall be much obliged to you for your sentiments upon this business As to the Free Warren it must now rest with the Lawyers what they advise must be done.

Digitized by Google

Then he sends him some apples, a piece of beef, and some woodcocks. You will observe, gentlemen, how great his acknowledgments are, as expressed in this letter, when he says—"I feel myself under greater obligations to you than any person living, and you are still laying me under greater every day; and I shall never be able to make any return," and he states that he had found the will that he had mentioned.

Gentlemen, these papers have been found lately, but I do not trouble you with those parts of letters which are merely complimentary. I at present do not read those. Here we find Bleasdale, in 1808, making the will of Miss Tatham, in favour of Wright, and a codicil giving a legacy of fifty pounds to Mrs. Wright, and he tells him that he has found the will alluded to. This was in 1808, and it is directly contrary to what he swore at York, as to Wright and Marsden having attended him in town. He has proved that when Wright came to town, he was in the habit of dining with him. I will prove to you that in 1792 and 1795 there were charges for a will made for him before Barrow's death. He said, he (Marsden) wanted him to make his will, but that he had never made a will for him till he came down to Lancashire, and was living in Wenning Cottage. He stated that he was invited to Hornby Castle, when he made this one for him as a friend living near him, but he never thought of charging him for his will at all. I will prove to you that Wright and Marsden came to town together, that they went to Bleasdale's office, and staid some time in London, in 1808; and that afterwards, the will was sent to the stationer's, with blanks, to be fairly copied. Then I will prove, that some time afterwards, Marsden came in the carriage; whether Wright came to the door or not I do not know. Marsden came into the office, and staid a little time, and soon afterwards two clerks were called in. One of these clerks is alive, and will prove his witnessing the will. What, now, gentlemen, do you think of Bleasdale's evidence, when he said that the first will that was made, was made by Barrow, and that he never made any will till after Barrow's death, or till after 1809, when I shall prove that he has sacrificed his own oath, as he made one in 1808. That is not, however, the whole exception I make to Bleasdale's testimony. I will shew with what dexterity he answered questions put to him, by my reading some of his own words. He is asked by me, in the cross-examinaton, "How long have you known Mr. Wright?"—his answer is, "For about eight or ten years after I knew Mr. Marsden.—I did not know Mr. Wright till after I visited Mr. Marsden at Hornby Castle. I never had seen him." Now, gentlemen, you find that in 1788 he sends his compliments, and, during all that time, an intimacy was growing up between them. I asked him, "Did you become very intimate with him?"—"Yes, more and more so. He had rendered me various little services—he kept a cash account for me, and saved me a great deal of trouble." You have got a lease of the

Digitized by Google

Digitized by Google

Digitized by Google

cottage you are in? was very anxious to get a place in the country, so as to be near some poor relations I had to come to, and it was through him that I was accommodated. How long was that ago? That was thirty years ago." Since that time, that gentleman, Mr. Bleasdale, has made his own will, and has left all his property to Wright, with the exception of only £4000 to his poor relations.

Then, Bleasdale is further examined, and asked this question: —"According to your account, you made five wills?—I think I did. Was any of them made in London?—None. Are you sure of that?—At least, I believe so. Recollect?—I have no remembrance of any will being drawn by me in London.—I cannot charge my memory.—I believe not.—I have no reason to think otherwise. How often did you see Mr. Marsden in London?—He did not go every year.—I remember his coming to London three, four, or five times.—I am not sure. Did not Wright come with him?—He did. Did he not execute some will when he came to London?—I have not the slightest idea of the sort." Gentlemen, I shall prove the fact to you.

He then speaks of the Misses Wright, and says, "they played vastly well on music," meaning on the piano-forte. It is a remarkable fact, that Marsden never played with them, although Bleasdale says they played remarkably well. Then, gentlemen, here is another fact, I asked him too, namely, as to whether Wright kept a cash account at Worswick's bank, as Messrs. Worswick, the bankers, had failed, and Wright had kept an account with them, but Marsden had not. When they failed, they owed Wright a considerable sum of money. Wright had made Marsden grant a bond to pay part of this money—I believe to the amount of £1600. at the least. By that bond you would think it was money borrowed of Messrs. Worswick; but, gentlemen, it is no such thing; it was merely a security given for Wright's benefit; Wright wanted Marsden to make up the loss he had sustained by Worswick's failure, and I put it to Bleasdale whether he had not stated that that was a proper thing. The question and answer was this: "Did you never suggest, at the period of Worswick's failure, as part of the money Wright had was in your name, and part in Marsden's, that you and Mr. Marsden should bear an equal part of the loss?" (I wanted to shew that it was paid by Marsden) and he answers, "If the question arose yesterday, I should say, now, as I said there, that as the money was there to answer Mr. Marsden's purpose, he should bear part of the loss. I might have said to Wright, I did not lend Worswick the money, but I lent it to you;" that is to say, therefore I am not to be responsible. Then he is asked, did you not suggest that Mr. Marsden should bear part of the loss?—I might in conversation have said that, as I felt it; but I do not know that I suggested it to him. I think he ought to have paid the loss himself."

Digitized by Google

Then I got from him this fact; you recollect, gentlemen, that Mr. Lister, the clergyman, had got the living of Tatham: I wanted to shew that he had accepted that living upon condition that he should resign it as soon as John Marsden Wright could have it; and he (Bleasdale) said, he did not know anything as to that fact. He is asked, "Do you not recollect the matter; did you not suggest that Mr. Anthony Lister should hold the living and should have the presentation of the living of Gargrave?—No, I know nothing about that." That was the fact. The son of Wright was to get the living of Tatham as soon as he should come into orders. My observation was, as to the witness's mode of answering that question. Then he is asked, "But you remember that Mr. Lister had the rectory of Tatham?—Yes, he had. He resigned it when John Marsden Wright came of age to hold it?—Yes. Was it not your suggestion that he should hold it, and resign it when young Wright came of age?—No, it was not." Then he explains that matter thus:—"Mrs. Lister, the mother, was extremely anxious about the son, and she made Mr. Marsden promise that he should go into the church, and have the living of Tatham. That was long ago, and Mr. Marsden held himself bound, as a man of honour, to present him to Tatham, although he had Gargrave also. I promised it (says he) and I will perform it."

Then, this examination follows:—"Did you not make the conveyance of the estate, he purchased in his life-time, as a free gift to John Marsden?—I did. When was that?—It might be ten or fifteen years ago, but I have a bad recollection of dates. It was called the Upper Salter?—Yes, I can give you the history of that. First answer my question. Mr. Marsden had just bought it?—Some years before. For £6,000?—I do not know what it cost. Did you know at the time you conveyed that estate to John Marsden Wright, that Mr. Marsden owed £28,000. on mortgage?—Yes, I did—I did not know the precise sum lent, but I knew he owed a large sum upon mortgage. Was John M. Wright of age at that time?—He was gone to Oxford, or about going, to the best of my recollection—he was intended for the church. Was it upon your suggestion?—No; I am disposed to tell you how it arose, if you wish it. No—I have no objection. Just as you please—I have no objection to hear it. Mr. Marsden, my lord, lamented to me in conversation, that he had no living to give to John Wright when he took orders, and he expressed a strong wish, in several conversations, that I would put him in the way to purchase the next presentation of the living; my answer to that was, that as far as my observation went, they cost a great deal more than they were worth; but, says he, 'What am I to do?' I said it was for his consideration; and, after some time, he suggested, 'I could give him Salter.' I said, 'You mean after your death, Sir?' 'God bless me!'

Digitized by Google

Digitized by Google

Digitized by Google

says he, 'How is he to live in the meantime?' And it was, therefore, at his own suggestion, that Salter should be given to his godson, and he expressed satisfaction to me that it was in his power to do so. Was old Wright present?—No, he knew nothing about it; but Wright knew afterwards, and expressed great surprise.—I have every reason to believe he had no idea of it at the time; it was a spontaneous idea of Marsden's own mind.' Then I put this question to him, 'How came Mr. Marsden not to do that by his own solicitors?' Now, gentlemen, judge for yourselves, whether the answer he makes was an equivocal answer to that question? Bleasdale, you will find, was a very clever man. He says, "I would be rather excused from doing any thing of the kind; but, as to his will and codicils, they were gratuitous on my part. I never charged for them; but he made me a present, which I expended away. You know the history of that?" He had stated that he was not his solicitor, although he made the wills; how came he not to do this by his own solicitor? He evidently evades the question. If I had pressed him hard, I should have had it stated that he was an old respectable gentleman, and was Mr. Justice Gould's solicitor.

Then I asked him this question, "How do I know the history of that?" (meaning the history as to his not receiving payment for making any of those wills): then he answers, "If you wish to hear it, I will tell you. My service was gratuitous in every respect." Then the learned judge, having learned from the depositions that he had got £200 from Marsden, asks him, "You gave it to Hornby Chapel?" But Bleasdale was too late to see that, and then he says "it was laid out upon that cottage."

The ATTORNEY-GENERAL.—Do you mean to read that part of his deposition in Chancery?

Sir J. SCARLETT.—Yes, I will. My friend may read all of it, if he pleases. He cannot make it stronger than old Bleasdale's evidence does. It was supposed that he had given it to defray the expence of a painted window for Hornby Chapel—and the learned judge helped him in answering that question by asking "You gave it to Hornby Chapel?" "No," says Bleasdale, "it was laid out on that cottage." Now, amongst the correspondence with Dawson, a letter had been found, written to Dawson, in which Marsden makes a figure, as to this painted window in Hornby Chapel; and when Bleasdale came to support the will at York, he having discovered that, although he had put into his deposition that he had laid it out upon Hornby Chapel. I may state the fact, that a letter was read, stating that the expence of the window was entirely defrayed by Marsden. To make that consistent, he was obliged to change his note, and therefore he said he had laid it out on this cottage. That shews that Mr. Giles Bleasdale had his wits about him. It is usual for attorneys to keep the instructions they receive for wills, or to keep the

Digitized by Google

drafts of old wills, that they may operate as instructions. I do not mean to say that they always do it, but every attorney ought to do it for his own security, especially if there be a want of veracity suspected. Not so, Bleasdale; and his excuse for not keeping his instructions is this, that where he did it he received remuneration for preparing the wills, and he pinned them to the drafts of the will; and another reason is, that he did not like his clerks to pry into these matters. That was his reason for not doing so in regard to this will; and yet, when he did so, he acknowledges he was down here, and still he did not keep the instructions. He kept one, and that has been read to-day. I do not mean to omit that fact. He made a will, which he says was substantially the draft of the present will, and then he puts in some instructions, in Marsden's hand-writing, to alter it, so as to leave out Mr. Lister altogether; but, at what period was that? Bleasdale admitted to me that it was at the same period when there was some difference subsisting between Lister and Marsden; I pressed him upon that, and asked him "was it not as to Wennington Hall?"—he evades the question in his answer, but says enough to show that there was some difference as to that. The witness, Miss Sheepshanks, yesterday stated that there was some difference between them; and Bleasdale identifies it.

GURNEY, B.—Yes; that was the expression she used.

Sir J. SCARLETT.—Yes, my lord, I think her testimony of great use to me in that respect. I had no idea that Lister made the bargain with Marsden, for the purchase of Wennington Hall for £27,000. But I asked him this question, "After you were very intimate with Wright, had you been apprised that Wright and Lister had quarrelled?"—I never knew from Wright then, or at any time, why it was that he was that he was dissatisfied. I remember once saying that I thought Mr. Marsden had been affronted at some slight shown him. He was of a different opinion, and there it ended. Did you never hear that Wright and Lister had quarrelled?—All I recollect on the subject is, that Lister thought Wright had made for him a hard bargain, and therefore he was out of humour with him, and that was all I knew of him.—Wright had purchased for him Wennington Hall, and Mr. Lister's friends thought he had given too much.—Did you not learn from Wright that Lister had charged him with defrauding him?—No, never." No expression was used by this witness with respect to Wright's severity; but, it has been proved by other witnesses that Wright was a man easily offended, and also that Marsden was an implacable man. After they had made the bargain for £27,000, Lister, it was supposed, had thought it by far too much, and he thought Marsden would have struck a proportion off, but he did not do so, although he was said to be a benevolent, good-natured, and kind man. Then, who was the party offended? I say Wright was the party offended. Mr.

Digitized by Google

Digitized by Google

Digitized by Google

Wright, up to that time, had considered Lister, as I conceive, a colleague with him. I do not impute to Lister any improper motive—but Lister felt he should participate in Marsden's property, and from their continued visits it was Lister's interest to cultivate Wright's favor; but still, there are steps that a man may repent of: and when he found he had to pay £27,000 for Wennington Hall, he began to be displeased with Wright. It was in Lister's power to have quarrelled with Wright, but he did not; and yet it was upon that occasion that Marsden was made to give these instructions for the alteration of his will by a codicil. I put it to you, gentlemen, under these circumstances, whether those instructions were not prompted by Wright? But it happens that the only instructions that Bleasdale received from Marsden, he did not preserve, although he was then desired to make an alteration in the will, for the benefit of the son, instead of the father, by a codicil; but it appears that Bleasdale thought it better to make another will, without such a codicil, as he did not like Lister to know what had been done for him in the former will, and that it had been revoked by a codicil. Although Bleasdale could not say that there was a quarrel between Lister and Wright, yet that appears most probably to have been the cause of the change which had taken place. If there was a difference between them, however, they seem to have come round again, although there were no visits interchanged for a year or two; and at the end of that time they came round, and the will was altered again. Marsden, it appears, was a man who felt all Wright's passions, and was, therefore, ready to resent what he felt, as to those who had offended Wright and he was equally easily prevailed upon to be reconciled, whenever Wright himself was reconciled. Why should Lister be supposed to have said anything personally offensive to Marsden, as to this, because Marsden is admitted not to have participated in making the bargain? He was not the one that was settling the price; it was Wright that did so, and it was against Wright that Lister expressed himself so irritated, in the presence of Marsden —and Marsden, you will find, always adopted Wright's enmities.

Now, gentlemen, I have read thus much of Bleasdale's evidence, in order to show the mode in which I will controvert it. Then my learned friend says much about our not calling Mr. Procter. Gentlemen, Mr. Procter was alive, and so was Edmund Tatham, the other witness to the will, at the time of the trial of the issue. Mr. Procter was the clergyman to whom Mr. Marsden had presented the living of Hornby. Mr. Tatham was a yeoman, a man of landed estates, who also witnessed Marsden's will. My learned friend did not choose to call either of them. Perhaps he did right, in point of law; but the learned judge thought otherwise, as Mr. Justice Park certainly said that he would receive the will, although he thought it would be better to have called him. I say, he told the jury to that effect, as it

Digitized by Google

might lead to another investigation; but my learned friend intimated that he would neither call Procter nor Tatham; for, even if Procter supported Bleasdale, there would be no occasion for it; but he (Mr. Procter) had already deposed that he thought Marsden was not competent, and my friend would not have had a right to cross-examine his own witness, in such a case. "What," said he, "you a clergyman, who attested the will, not think the testator competent?" If he had called him, and I had cross-examined him, my friend knew too well that the whole internal economy of Hornby Castle would have been disclosed; and probably he thought I might have got out of those persons such material information as would leave no doubt upon the minds of the jury, upon that subject, and the state of that economy. Those two witnesses were gentlemen that Wright and Bleasdale themselves had recommended; Procter was recommended by Wright, and Tatham was employed by Wright, as one of the commissioners of taxation. Why, therefore, was Wright afraid of calling them? They put their names to the will; I cannot tell what their evidence might have been on that occasion; they have been examined in Chancery; my friend might have read their depositions, if he pleased; or he might have read Tatham's only, if he were afraid to call Procter. Tatham being now dead, he thinks I may call Procter, as he is afraid himself to do so; for, if I were to call him, my friend would have an opportunity of cross-examining him; and then he would get him to confess, in a court of justice, that he had attested the will, under that conviction; he might think that, on such an occasion, he would make Procter cut an awkward figure, while, at the same time, he thinks, if he called him, and cross-examined him, it would be conferring an advantage on the other side. All this manœuvring shews that he was afraid, from the first, of calling those other witnesses to the will, as their evidence might not tend to support it.

Gentlemen, I now come to some letters, which have been produced on the other side, to which I beg to call your particular attention. Marsden's letters may be divided into certain classes, as my friend has done. The first that we have, in point of date, is from Greene, respecting the purchase of Hornby Castle. Although I mean to commence upon that class, yet I assure you I will not fatigue you by repeating any of them. I shall only shew that that purchase was projected by Mr. Wright and Mrs. Cookson, aided and assisted by Fitzgerald and Barrow, as their agents, during the negociaton for that purchase; and you will observe that that letter is clearly written, more in the style of a gentleman than any other, and that Marsden has copied it. The question is, whether Marsden was or was not the author of all these letters? As to that, I shall only say that it is your duty, as a jury, to be satisfied that Marsden did write such a letter, of his

Digitized by Google

Digitized by Google

Digitized by Google

own mind; and that he himself indited all the letters; that is to say, not merely that he wrote them, according as it is given in evidence, but that he composed them, and was not prompted by any body. I admit, notwithstanding all appearances, that if you be convinced in your own minds, that he did actually indite all those letters, you cannot but find a verdict against me. That is making a very bold admission; but at the same time, I must say, that if you should find on the contrary, upon due consideration of this part of the case, that Marsden did not write those letters, (I mean not as a mere copyist,) but that other persons had dictated them to him—then I ask you to come to an opposite conclusion, as arising from them. If a man be a mere mimic, and if he be made to write, laboriously, copies, through another person's dictation, something that can be shewn afterwards for subsequent purposes, I ask you if the whole of such letters be not a piece of machinery and contrivance, from the very beginning down to the end? Now, mark; these copies of Marsden's letters are read to you, in order to satisfy you that he was of sane and sound, or of competent mind; and it is said that from these you are to form an inference that he might easily make a will of any sort he chose. That is what is said on the other side—but if you find those letters fallacious, and have reason to suspect that they are not of his composition—if you have reason to doubt that statement of my friend—what will you say? Will you give Wright a verdict, upon the evidence he gives? or will you believe any thing that has been laid before you, in the shape of letters from Marsden, if they were actually composed by another, and merely copied by him, for the purpose of deceiving any jury who tried the cause? Gentlemen, I beg you to observe this—it was rumoured that a commission of lunacy was, at one time, to be sued out against Marsden. That was at one time talked of: it was the interest therefore of Cookson and Wright, to collect evidence to produce under that commission. They did not wish to part with the gentleman they had got hold of; it was important therefore to have an opportunity of reading before a jury, upon such a commission, letters said to have been written by him, even though they were, in point of fact, written under their own eyes, and by their own dictation. Now, gentlemen, look at those letters written from Buxton. I do not believe you have any one letter (I mean an original letter) produced, as having been written by him when he was either at Wennington Hall, Belle Hill, Hornby Castle, Buxton, or at Heysham, of which there were not two copies. I admit that Wright was not at Buxton, but his aunt was there, and it is very singular that there were two copies of almost every letter, while, at the same time, even by their own account, he hated writing: nay more—he himself says, in some of them, that he is a very ill answerer of letters. What a strange thing then it is, that a man should write laboriously and

Digitized by Google

unwillingly, and that he should keep copies, in his own hand-writing, of every letter he wrote, and that many of those letters should have been kept, with Wright's endorsement upon them! That very letter which was found in the cupboard, addressed to Greene, upon the subject of the tithes of Gargrave living, and that letter from Marsden to Wright, produced as shewing that Marsden was fully competent, should be there found.

We have these letters laid together, endorsed in Mr. Wright's hand-writing; one of them is endorsed thus—"20th April 1799, Mr. Greene's letter with Morgan's estimate of the living of Gargrave inclosed." This was found in Mr. Marsden's cupboard, and is it possible that Mr. Sharp has been imposed upon? He really thinks that Marsden must have kept them there, and that Wright knew nothing of them. Would it not have been better to have gone to some one in the house, who kept the key of the cupboard in Marsden's room? If Marsden kept the key himself, it is extraordinary that nobody is called to represent that; here is a man, who does not like the writing of letters, either upon business or otherwise; and Mr. Sharp, to make this probable, says, he himself never kept a letter-book till he was a partner with Mr. Dowbiggin. If so, Gentlemen, do you think it natural that a man like Marsden, averse from writing (and when he does write, writing most laboriously) should keep copies even of his complimentary letters? But what is still more extraordinary, it appears that Wright had a clerk, thirty years resident in the house, who may be said to have been in the service of Marsden—a Mr. George Smith. Might not Marsden have said to this Mr. Smith "pray be so good as copy this letter?" When you think of that, will you not give some consideration to that very fact? My learned friend will not call George Smith before you. This Mr. Smith is in Wright's service even now. He, however, keeps out of the way; as it appears Wright dare not call him. This, I should say, that if he had called him, I should have put boldly this question to him, "will you swear that Wright did not stand by when Marsden wrote those letters, and dictated them to him?" If he said "Yes, he did," then, gentlemen, what would you think? Is it not endorsed by him on the back?

Gentlemen, do you think all this mere conjecture, when there is that witness, the most important of all, who goes away in order not to be called! This is no light affair; it is a grave consideration. Here is evidence of the greatest importance, that could have been given by a witness who is not called. It would have been evidence of more importance than any that has been called. Here is an instance of the defendant, Wright, not having the courage to call as a witness his own clerk, Smith, who could speak to you explicitly as to those letters, and could even produce others. This ought to satisfy you that there is something that you cannot conjecture, to which it ought to be attributed that such an important witness is kept back.

Digitized by Google

Digitized by Google

Digitized by Google

Gentlemen, I shall go further and say this—if Marsden be the person that my witnesses will introduce to you, can you doubt that, upon such an investigation of his mind and conduct, he was most certainly incapable of writing all, or the greater part, of those letters? I beg to remark that the letters written from Buxton are altogether different from the other letters. There is nothing that he might not write in those letters, for instance, we have had a letter from Marsden to Wright, dated from Buxton, which states, "I am very glad you have done so and so, and that you are going to settle Skirrow's business. I am very glad you are going to sell such and such a farm and to settle Skirrow's business." He does not say he has directed him to sell or to settle, but he merely says, "I am very glad you are going to sell such and such a farm." In that respect he merely re-echoes Wright's letter when he says, "I am very glad you are going to sell such and such a farm;" but still, the accounts as to those farms are not produced. Then there is another letter from Marsden, when at Buxton, making some observations "as to a man falling from a scaffold, and stating that it was thought he should have been bled." Any child might have written that. I will prove to you that Marsden was continually kept in his own room when writing these letters, and that he brought them to Mrs. Cookson, to revise and correct—those letters which she herself dictated; or upon those occasions, and upon other occasions, he brought the letters to Wright, who gave him directions about writing them. I will shew you that when at Buxton, Marsden had done something which gave offence to some Irish gentleman. I know not what the offence may have been, but Mrs. Cookson became alarmed, and was so frightened that she ordered Marsden to be locked up at Buxton in his chamber. There was then a man in their service whom my friend does not think proper to call, but yet I may perhaps be able to do so; and by him she writes to Mr. Wright, at Wennington Hall, stating that she wants the carriage, to take an airing, and to take Marsden out, instead of allowing him to be seen in the streets of Buxton. I will call the servant who went to deliver that letter, which is not produced. I wish Wright had produced it. Then here is another letter from Marsden to Wright, dated Buxton, August 21st, 1791, stating, "I received your letter of the 12th of August, and as my aunt is writing I take the opportunity of doing so. I am glad you have let Beckett's farm." Now I am instructed to say that I shall prove to you, by the very man who went with that letter, that Wright came back to Buxton, in order to settle that matter with the Irish gentleman. Wright dare not produce that letter. It was a letter written by the aunt to him. The servant will tell you that during all that time, till Wright came, Marsden was locked up in his room at Buxton.

I now come to this other letter, and I do not mean to say that Marsden did not require assistance in this. This is a copy in

Digitized by Google

Marsden's hand-writing; it is packed up along with Greene's answer, and upon it is such an endorsement as I read just now. It is dated the 18th of March 1799, from Mr. Marsden to Mr. Greene.

That letter contains some statement in figures. I can prove to you that Marsden never got beyond two or three lines of figures in addition, and you will be able to judge whether this letter were his own composition or not. Here is another letter, dated in 1799, the whole of which is well spelt, and well written, but it is perfectly different from his style, and in it there is an account carried out as a banker's account. There are not any mistakes in the spelling; and, on the whole, it is as good a composition as that of Fitzgerald's, which I have already noticed as being as good a letter as any man could write. There are other letters, both before and after that date, which shew that Marsden could not write in a decent style, nor spell either. It can be shewn that the whole of this letter is written by him. It is therefore evident that this letter must have been written for him to copy. It is clear that it was intended for Wright's information, and here is Wright's endorsement upon it, although found in Marsden's cupboard. He continues the correspondence on the same subject; some parts of it are in good style. Here is one that follows that letter, dated in May, 1799, in which there are traces of Marsden's mode of writing. He writes here about the sum of £3000, and he first puts the letter £, and then there is put 'guineas', and it is altogether wrong spelt. I hardly think that a man who could write such ridiculous blunders, was able to write a letter like the former one. I will shew you that it demonstrates Marsden to be a man of total incapacity. I will endeavour to suggest the natural conclusion that ought to be drawn from it. You see from this letter that Mr. Marsden had been made to write a copy of the original letter, which we have not. It is well written, in point of style and composition. Gentlemen, you must understand I do not dispute that fact. My friend stated that Mr. Dawson, who is now dead, had thought fit to open a correspondence with Marsden, and I do not mean to deny that Wright said that Mr. Dawson was willing to cultivate his acquaintance, and expected something, and he (Marsden) himself seems to prepare Dawson for it. He begs him to give him a list of the names of his children; he does engage Dawson in a correspondence, which is kept up for some time, and which is now shewn to you on the other side, in order to make you believe that Marsden was competent to make a will, merely because he wrote, according to dictation, those complimentary letters; but I trust you will look at the other side of the question, and see whether Wright did not assist Marsden in that object. When a man makes a copy of a letter, he generally writes the copy more briefly than the original; but here we find Marsden chooses, when he writes these letters, to keep copies of them, all of which copies have his signature, with all the formality of an

Digitized by Google

Digitized by Google

Digitized by Google

original. He not only gives the date, but the place, and his signature: for instance, he says in the conclusion, "I am, dear sir, your respectful humble servant," and then adds the name and the date, so that the copies are just the same as the originals, in every respect. That he does with all the letters which he wrote from time to time; so that it appears he writes them over and over again till he has written a good one, fit to be sent. Is it necessary, then, to make a criticism of the internal parts of these letters? I should think not, as you will find these facts run throughout the whole of them. If you had had Smith or some one here, who could tell you more of it than you have yet heard, it would put that matter beyond a doubt. Here is a letter from Mr. Marsden to Mr. Dawson, dated 3rd March, 1812, in which he says "It gave me great satisfaction to hear the account of your family being so well disposed, and it must be an additional satisfaction to you to see them improving." Then he goes on to say—"I have not any money at the banker's" (his agent had a banker's account with a vengeance); "I am sorry you have had any thing to do with the Boldero's." Here you find the word "do" is written as if it were "ditto," for it is a *d* with an *o* above the line, and a dot at the bottom, just as any one would write and contract the word "ditto." Now, I say that if this were written from a copy, he has copied that error of another, who had written the word *do* with the *o* a little above, with a dot below in the manner I have described. Now, gentlemen, have the goodness to look at that, and say if any man of common sense or education would write that for "do;" it is evidently "ditto," (handing the letter to the jury). This, you will observe, is a copy; and as to the original, we have it not, but the copy is in his hand-writing. You see a dot is placed under the *o*, to specify, as is usually done in such cases, that the *o* was placed at the top as a contraction. Now, do examine it, and you will agree with me upon that point. I have no doubt that he had seen in the copy placed before him the *d* with the *o* above, and the dot under it (meaning *ditto*, and not *do*), and he thought it should be so here. There is another circumstance worthy of observation: you will find that the word "you" has been evidently corrected, and made larger by some other person, with different ink. My observation upon that is this—although, in point of style and composition, it is a good letter, and the letter of a rational man, who was in the habit of writing such letters, and in that manner; yet, if viewed as being a copy of another, there is nothing original in it, and even its errors are copied. If it had been his own diction, it would have been more natural for him, if he knew any thing of business, to have said, "I do not keep my money myself, but my agent keeps it at the bankers;" but here you see how this poor man was mistaken, as he had, by Bleasdale's advice, actually to pay part of the money that Wright lost afterwards through the failure

Digitized by Google

of Messrs. Worswick, on the footing of its being his money that was at the bankers'.

Gentlemen, I shall proceed yet further to comment upon some of the letters written by Marsden. In doing so, I believe I had better introduce what I have to say next upon this subject, with this suggestion, which I propose to submit to your consideration. You see, gentlemen, the question here is, whether this man actually composed those letters himself; that is to say, whether they were suggested by the efforts of his own mind, and consequently the result of his own reflection, his own unrestrained comprehension of mind and judgment—or whether they were merely copied by him from the suggestions and writings of another set before him, and which he was taught, and conceived himself bound to copy, not only once, but twice, or thrice, till he had made a copy fit to be sent by post? I say that the probability is, that the latter proposition is the truth, and I mean to offer to you such minute observations as I think will shew internal evidence of that fact. In doing so, it is fit I should state to you that I shall prove he was able to copy, and that the talent of writing was almost the only talent he possessed, but it extended no further than merely that he could copy anything set before him, and even mechanically and minutely too. I do not mean to say that he could not read what he wrote, but I mean to say that copying was the only thing that he had any adroitness in effecting. I do not find him, when at school, doing any thing that required the exercise of judgment, or even of memory; he did nothing but practice copying. I should therefore say that he was a copyist, and nothing more.

Now, gentlemen, you have had here produced what are called the last class of letters—and those have been introduced by my learned friend in the most theatrical as well as rhetorical style. I mean those letters that passed between him and Mr. Alexander Marsden, the under secretary of state for Ireland, who knew nothing of this gentleman, when that correspondence began. He had, indeed, heard of his name, and he had introduced himself by a letter written for the purpose of making some inquiries about him and his family, and also his ancestors. To that letter, John Marsden sent an answer, a copy of which, in his own hand-writing, has been produced to you, and great pains were taken, before that letter was introduced, to shew that he was a great genealogist. I do not find, however, a single witness that ever said he could trace even the genealogy of his own family; but all that is merely to give to that letter a material and important effect. It was said that on one occasion he had talked of the Lowther family, and Mr. Justice Gould, and also that he had mentioned the name of Mr. Gardner, an attorney, at Garstang, when he thought it right to speak of a gentleman who had risen to eminence, or to the bench, from the profession of the law. That might have done

Digitized by Google

Digitized by Google

Digitized by Google

very well, and be very wise to have attributed to barristers, but not to an attorney at Garstang; but Mr. Bleasdale I think was present at that conversation, and he mentions the fact of his having enumerated amongst them, Mr. Justice Gould, who had a daughter married to the Earl of Cavan. It was a very odd fact, however, for Marsden to treasure up in his mind, but it may have been mentioned by some others in his company. It is singular, too, how these old genealogists get hold of these things. I had the honour to know that lady, and her daughter, who married a Mr. Whitehouse. Now, in the first part of Bleasdale's evidence, to set him off properly, my friend did not read the introductory part of it.

ATTORNEY-GENERAL.—I beg your pardon—I read every word of it.

Sir JAMES SCARLETT.—Then, if so, I will not read it again; but, gentlemen, you find that in the first part of Bleasdale's evidence, he is asked, "Were you concerned as attorney for any large public bodies?—For the London Assurance all my life, and for the Hudson's Bay Company for a great many years."

"Are you now executor to the brother of the late Mr. Justice Gould?—Yes." So that you see it is very probable that Mr. Bleasdale might have informed him, in conversing upon these matters, that Mr. Justice Gould's daughter had married the Earl of Cavan. I have here the copy of a letter I got yesterday, which has been read to you, to which I beg to call your attention once more. It is from Marsden, dated Hornby Castle, the 20th of November, 1811—and begins thus,—"Sir—I was indeed surprised, but very agreeably so." I beg you, gentlemen, to look at the style of this, for it is not written in the ordinary mode in which letters commence, such as "I have received yours of such and such a date," but here it is—"I was, indeed, surprised, but very agreeably so, on the receipt of your letter you honoured me with. I was highly obliged by the frankness with which you communicated to me your descent, and the circumstances respecting your family, and in return, it is with pleasure I state to you the short history of mine. If from thence it can be ascertained that I have the honour of a relationship to a family of my own name, in every way so respectable as yours, it cannot fail to afford me the highest gratification." This is, in point of composition, as good a letter as any gentleman could write. He goes on to say,—"My ancestors had considerable possessions in Craven, and also in a village, called Marsden, near Colne, from which, I presume, they originally sprung. They had also possessions in the borough of Clithero, and one of them sat in Parliament for that place. Those possessions have long since been all sold. I believe a branch of my family settled at Manchester nearly two hundred years since."—Those latter words are interlined.—"I have heard that some of them

Digitized by Google

afterwards removed into Derbyshire. Their arms were the same with mine. My ancestors removed to Wennington Hall, near Hornby, about the year 1600. My grandfather, Henry Marsden, died about seventy years since, leaving my father, Henry Marsden, his only son. He died about fifty-three years ago, leaving my elder brother Henry and myself his only issue. My brother died unmarried soon after coming of age, when I became the sole descendant of my family in the male line, which, on my death, will probably become extinct, as I have never been married. If this detail should induce you to make further inquiries, I shall be happy to give you all the information in my power. Should any of your friends visit this part of the world, I shall be happy to receive you or them here, and should it be in the shooting season, I think I can promise as much diversion in that way as most private country gentlemen can command."

This gentleman, Mr. Alexander Marsden, is now living. I have now got two of the original letters from Marsden to him that have been read to you. He saw John Marsden but once; he wrote this letter in the first instance, and then another to thank him for the attention paid to his enquiries. As he was passing through Hornby he wrote another letter or note stating that he would wait upon him. Mr. Marsden received him at Hornby Castle when passing through Hornby, it does not appear that he ever saw him afterwards—but much of civility passed afterwards by letters, and my learned friend thinks you are to infer that Marsden was competent on that account; I infer nothing of the kind. Mr. Alexander Marsden is now a very old man; he was reluctant to part with those letters or communications he had had with John Marsden; he could not attend here as a witness, but by his having furnished those two original letters we dispensed with his attendance. I have here three original letters of which you have heard the copies read. Now it is very important to compare those copies with the originals. My first position is this—that these letters were all dictated by somebody else and then copied by Marsden, and when he had made such a copy as was fit to be adopted as the original then it was dispatched, but it is very singular that these letters are not put into the post-office for many days after they were dated. This letter is from Marsden, dated Hornby Castle, the 20th of November, 1811. Now I produce to you the original of it. It had been put into the post no less than ten days afterwards, the postmark being the 30th of November, 1811. Mr. Marsden's letters went free through the secretary of state's office in Ireland, that is the original, and this is the copy. That which purports to be the original, is written in a much more correct hand, although the copy is not amiss; it would have been a fair letter to have sent this, which is called the copy; but this other one is somewhat better altogether: the spelling is more correct, but still it is cor-

Digitized by Google

Digitized by Google

Digitized by Google

rected. Various topics are introduced, but what is material to be observed is, that you will find the word *dissent*, which was so spelt in the first copy, is here spelt with *ece*, with the omission of the *s*, and made *decent*, and the words "*two hundred years since*," which were interlined before, are here omitted altogether. The copy sent to Alexander Marsden does not contain those words, *two hundred years since*. It is a fair conjecture that as Marsden was a man who had copied laboriously and unwillingly that which was furnished to him, he did not put the words *two hundred years since* in the right place, and then, therefore, omitted them altogether: they did not think it worth while to introduce them into this which was sent as the original: it was sent as it was, without those words (which my friend would call a clerical error) but it is written in a better hand altogether, and it bears date the 20th of November, 1811, although the post-mark is the 30th of that month. It is very true, it may be said, any one of those who wrote the letter, would have made an alteration of the date before it was put into the post: but the fact is, it may be presumed that the intervening time was employed in getting Marsden to prepare that which was to be adopted as the original, and the date was not altered from that which had been first stated. I cannot tell as to that, as I have not George Smith, nor any person belonging to the house, called to explain how that was. I must address you then upon the circumstances and reasons which are alone afforded of the internal evidence. It is a remarkable fact—that the date so materially differs, but it must have been the fault of those who set him the copy, and who made him write it over and over again till he made a correct copy, or one which they thought fit to send off to its destination. They might have thought it made no material difference whether they left the same date or not, or they may have overlooked it, although it were not finished so as to be put into the post till eight or ten days afterwards; so again, as to the words "*two hundred years since:*" and although inserted in his own hand in that which is called the copy, yet it is not inserted at all in that which is called the original. As it was not in the copy sent, I can only suppose it was intended to have been put in, but he had omitted it. Another observation I beg to mention, as applicable to the whole of these letters, is this: I beg pardon—in the supposed copy there is this sentence "my grandfather, Henry Marsden, died about seventy years since, leaving my father," at the end of the word "*father*" you will find the tracing of the word *Henry* distinctly, but it is scratched out and a new sentence begun at the other line, and then it reads "leaving my father Henry Marsden his only son"—the word Henry having been written at the end of the line it was first scratched out, and then it was blotted out altogether, and written on the next line. From that, I should suppose, that Marsden (or rather I should say Wright)

Digitized by Google

was not satisfied with this. If this were a copy merely to be kept for his own convenience, why should he have been so exact as not to erase it at once, when it was to be written twice over. It is erased at the end of the line. You must hold it up so, that the light may come askaunt of it, to discover the erasure, (handing it to the opposite counsel.)

ATTORNEY-GENERAL.—It is quite plain.

SIR JAMES SCARLETT.—You will be pleased to take it into your hands (handing it to the jury) and you will find the original has the word Henry in that very place where that word is erased in the copy. Now, you will see in this, which we must call the original, which was sent by post, the word "*Henry*" was left in its proper place at the end of the line, and the other begins with it properly. Now, let us suppose, upon my friend's theory, that Marsden kept copies of all his letters, then, I ask, why should he have been so particular in that which was to be merely a copy—why not leave it as it was? My conjecture is, that it was first intended to send that first letter which was in consequence of these errors made to constitute the copy; it was in consequence of this, viz: that there was an interlineation in the first one of the word *Henry*, which was afterwards scratched out, and then it was thought better to write it again with Henry only once written, but in the subsequent copy of it, it happened that the words "*two hundred years since*" were left out entirely, but it was not thought worth while to write another to supply that defect. This was to save trouble, and it was not very material. Perhaps you will have the goodness to look at that which is called the original, and to compare it with the other which is called the copy (handing the other to the jury.) That is a better written letter, but it is in the same hand, and it is written with more care and precision. There is also the cover that inclosed it, and you will find it is franked under the signature of a member of the county, (handing the envelope, also, while the others were, at the same moment, returned to the Attorney-General, who examined them again.)

ATTORNEY-GENERAL.—My lord, as these letters have been handed up to the jury, I have looked at them again, and I will only observe that I find the letter that was actually sent was written upon gilt-edge paper, and the copy is not. It is fair to make that remark now.

Sir JAMES SCARLETT.—That may be so, but still that circumstance does not take away the force of the remark I made as to why any one should be so particular as to copies, and to be at the trouble to erase the word *Henry?* Why not have scratched it out at once with the pen? Now I proceed to observe that it is an odd circumstance that Marsden never acquired any thing like a running hand, for it is well known that a man who, after a certain number of years, has been in the habit of writing, acquires

Digitized by Google

Digitized by Google

Digitized by Google

what is called a running hand, but here it is singular that Marsden retains to the last, evidently the character of a mere school-boy's hand. A man who writes much, either of his own fancy, or from dictation, would naturally acquire some facility with the strokes of his pen; but yet you will find here that each letter of the words is laboriously made.

Now, gentlemen, I beg your attention to another circumstance in relation to another letter from John Marsden to Alexander Marsden, dated the 22nd of June, 1812, and it is a very important and well written letter, although it contains some alterations worthy of notice; if you will give me leave, I will read it to you, as it is of vast importance in the consideration of this cause. He says,—"My dear sir,—I was duly honored with both your letters,"—here the word "*and*" is scratched out. I have got the original of this, and you will judge whether that has not been effected with a different colored ink. Then he continues,—"the reason for my not answering the first letter sooner, I expected to have had the plasure of sending the drawing I promised you with it. Artists in this part of the country are so very scarce in that branch of drawing, that I could not meet with one that was able to execute to my wish. I expect to have it done soon, as there is one coming to Lancaster in a short time. I do assure you, it gave me great satisfaction to hear that you and your daughter arrived safe and well in Dublin, after so long a journey, and travelling in such unfavourable weather, and over so mountainous a part of the country. It would have given me pleasure to have seen you here,"—the word "*here*" is interlined, but not in the other copy,—"it would have given me pleasure to have seen you here at a more pleasant part of the year, that you might have seen more of the country about the neighbourhood where I reside. With regard to the disturbed state of this country here,"—which last word is again struck out, and the erasure of the pen is in a deeper coloured ink. Then he says,—"you will most probably have heard a great deal more of it than really existed. There has been some rioting in and about Manchester, Stockport, Huddersfield, and Wakefield; but I trust there will be an end put to it in a very short time. Several of the rioters was sent to Lancaster Castle, from Manchester, and two of the judges came from London to try them, eight whom was found guilty, and executed at Lancaster, on Saturday the 13th instant." Here you find several instances of bad spelling, and some omissions: for instance, the word *of* after *eight* is omitted, and the word try is spelt *tri*. It appears that the words originally had been "eight of whom," and the words "of whom" have been erased, as you will see, with darker ink, and over the erasure the word *whom* is written above, omitting entirely the insertion of the word *of*. It appears evidently that the insertion is written with darker ink. It does not appear to me that that insertion is at all written in the cha-

Digitized by Google

racter of Mr. Marsden's hand-writing. In the original it is "eight of whom," so that the correction in this one is adopted instead of that. Then the letter proceeds thus,—"the last week thirty-eight was brought to Lancaster Castle, it is said for administering unlawful oaths." The syllable *un*, and the word "*unlawful*," is erased in deeper ink than the other part of the letter. It appears that the other part of the word "*lawful*" began the other line, but that latter part of the word "*lawful*" was written with a capital letter, which ought, as a part of a word, to have been written with a small *l*. The large *L* is erased, and the correction is the insertion of a small one so as to cover the body of the original capital *L*, and so as to leave the points of the tail of the large *L* out, and then the other part of the word *un* is added so as to precede the *l*. It is for you, gentlemen, to judge whether that be done in the same hand-writing or not, in this which is called a copy. Now we will look at the original: here we find the word "very," which was in the copy, is struck out in a darker ink in this passage, "I hope, by the exertions that government is now making, a total stop will be soon put to it. All that have been taken yet, appear to be of the lowest class, and very ignorant." It is "*the lowest class*," and not "*the very lowest class*." That letter bears date the 22nd of June, 1812. Your lordship will see the justice of those observations by taking it in your hand and comparing it with the copy (handing them up to to his lordship). I have only lately got the original, and it bears the same date, the 22nd of June, 1812. The post-mark of that letter is, however, "the 16th of July, 1812." Now, let us see what the remainder of the contents of it are. As before, in the other case, it is written in a plainer and more distinct hand, but it is of the same character, and we get here the corrections that were made, and the words which were required to be struck out. This one adopts all those corrections and alterations, and leaves the letter as it was before in this passage, "The last week thirty-eight was brought to Lancaster Castle it is said for administering unlawful oaths." Now here the word "*unlawful*" happens to be at the end of the line, and it is a curious thing to say, but it appears that he not only copies the small *l*, but he copies the tail of the large *L*. It seems to me that he has most laboriously copied the appearance of the *L* according as it was in the example set before him, for the purpose of being copied, as he makes a *fac-simile* of the writing as it originally stood, or, in other words, he has still made the mistake of writing the large *L* without making the correction of the small *l* in the first instance, or, at the same time he was writing the letter. But, indeed, I rather think he had aimed at making a faithful copy of it, and that wherever there was an erasure in the one he struck it out altogether in the other. That letter is also written on gilt paper, and the other copy not so. I say it is not so in order that my friend may be

Digitized by Google

Digitized by Google

Digitized by Google

saved the trouble of contradicting me upon that point. I do not imagine that any body of that school in Hornby Castle, were ever good orthographers nor grammarians; for here it is stated, "the last week thirty-eight *was* brought to Lancaster," instead of "thirty-eight *were* brought." It is clear there was abundance of time left to all the parties concocting this letter, to have rectified that error between the date of the letter and the date of the post-mark. Gentlemen, you will look at it and see whether the corrections have not been made by another hand; you will also see whether those corrections have not been made in the first copy for the purpose of a more perfect example for the second, which he was to write upon gilt paper, and to inclose in a cover. He might make copies for several hours each day, till it was thought he had one perfect enough to entitle him to write it upon gilt paper, which my friend has noticed was destined to be so used. Amongst the many letters of Wright's that have been read, shewing equally specimens of bad spelling and grammar, here is one, for instance, in which he says, "the ladies joins me in compliments, &c." which demonstrates that he was not very particular as to his number or grammar. What I should say, therefore, is this, that if Marsden had made this copy, and corrected it himself, why should he not have written it the next day, without imitating his former errors, and have sent it off by post? It is evident that one of the copies is kept purposely as a copy, and the other sent off as the original. If it had been a school-boy, who was about to be sent home during the holidays, who had been writing to his papa or mamma to inform them of that event, one may easily imagine he would just write in this same manner as Marsden has done, and that he would make two or three copies before he makes what may be denominated the principal copy, and he might keep the rough copies or one of them, as a specimen, but why should a grown up gentleman do that? Nay, more, it is singular to observe, that this letter, and the superscription, are written upon lines. Then, gentlemen, I come to the last, which happens to be without a cover.

GURNEY B.—I want to see the correspondence between Marsden and Wright.

ATTORNEY-GENERAL.—I will hand those letters up to your lordship; (handing them up.)

(Here a consideraule pause took place in the proceedings, during the time his lordship was inspecting those letters, and the jury were inspecting the others.)

SIR JAMES SCARLETT.—Then, gentlemen, here is the last letter of this class, that I shall notice; it is written by John Marsden to Alexander Marsden, from Heysham, where Wright has built or bought a house, and where he now resides. Marsden was there when Wright was there, and he there kept copies also of the letters he wrote. This one is dated the 1st of June, 1813, in which he says,—"My dear Sir,—I feel much obliged by your

Digitized by Google

kind letters. I have been confined the greatest part of this spring by a violent attack of the rheumatism, and was not able to write; I am now got perfectly well again, thank God. I was happy to hear all your family was well, and that your excurtion (that word is here spelt *excurtion* instead of excursion) to Bath was pleasure (meaning that it was pleasant). I shall be at Hornby Castle again about the beginning of September, and would be glad to see Mrs. Marsden and your daughter to spend a few weeks with me, if they are not returned to Ireland. Had I been in the neighbourhood of Harrowgate I should have been glad to have paid my respects to Mrs. Marsden and the young ladies. Mr. and Mrs. and Miss Wright beg their compliments to you and Miss A. Marsden. I am with best regard to all your family, my dear Sir, most faithfully your's, John Marsden." The original and superscription of this letter are also written upon lines, and this copy, like the others, is signed with the same formality as what is called the original. Now, here is the one which was actually sent to Mr. Alexander Marsden, and here is also a copy of it. It is written on one sheet of paper, and the address outside is "Allexr. Marsden, Esqr Commissioner of Exise Dublin," the word Alexander has been spelt with two l's. Although it be dated the 1st of June, yet the post-mark is "Chester, 9th July, 1813!" It is quite plain that the word Dublin has been painted over, and it is equally plain that the letter *D*, with which that word begins, has been at first a small *d*, and has been afterwards altered with pencil to a large one, which large *D* is exactly such as Mr. Wright's D's; it is exactly of the form of his D's, as may be seen by comparison with his letters. It appears that the India rubber has not rubbed out the original turn of the *D*, which was made in pencil; there it remains, and it is plain to be seen by the eye. The rest of the *D* has been written over, or, what is generally called, painted over, upon the pencilled one. You will also find clearly that it was written upon pencilled lines, and that the whole letter was written upon lines, as they are still discoverable in the third, fourth, and fifth lines, so that there can be little doubt that the whole letter was written upon pencilled lines, and although the pencilled marks have been rubbed out in the other lines, they are still clearly perceptible in those particular lines, namely, the one in which he speaks of "a violent attack of the rheumatism," and also in the lines continuing "and that your excurtion to Bath was pleasure." In these you will clearly trace the pencil lines. Then, gentlemen. here is a *d* well worthy of observation; further down in the letter you will find the words "neighbourhood of Harrowgate;" the first syllable of the word neighbourhood has been erased, and the letters *neigh* have been written over the erasure, and that part of the erasure has evidently been written over, and the whole of that syllable appears to be in Wright's hand-writing. I have persons who are familiar with his hand,

Digitized by Google

Digitized by Google

Digitized by Google

who can prove it to be so. My learned friend may call evidence to contradict that, but I have abundance of evidence of his hand-writing, and you, yourselves, will, by inspection, draw that conclusion. You will see by inspecting the letters proved to be in Wright's hand-writing, what was the peculiar turn of Wright's g's, and you will be able to distinguish what was Marsden's g originally. You will see the tail of the g, here, is turned up boldly, and the whole of this syllable *neigh* is just like Wright's hand-writing. Is it not, then, well worthy of the remark I make to you, that the letters written by Marsden were first concocted by Wright, so that Marsden might make copies of them, and when he had made a blunder in many of his copies it was rectified afterwards by Wright? This letter was written at Heysham, and perhaps Wright got impatient and could not be troubled with Marsden making another copy; he had more time at Hornby, and as there was not time for another letter being written, he (Wright) puts this syllable *neigh* in the letter himself. From this it is plain, that he never allowed any letter to be sent off without being first inspected. Either he (Wright) saw the letters, or somebody else was employed by him to inspect them.

GURNEY, B.—Let me look at the draft and the original letter. (These were handed up to his lordship.)

Sir JAMES SCARLETT.—I acknowledge that this letter is written upon gilt paper, so that that will save my friend the trouble of again observing upon it.

ATTORNEY-GENERAL.—The reason I did it before was, that you said the other draft was intended to be the original, till I observed the gilt-edge upon the paper.

Sir JAMES SCARLETT.—One of each seems to be so, but nothing turns upon the draft. I will prove to you, gentlemen, that that was in the exact state that Marsden produced it. I will shew it by those who saw it.

JUROR.—May we be allowed, my lord, to see some of Wright's other letters, to compare it with this one.

Sir JAMES SCARLETT.—You shall have it, gentlemen, in the course of my evidence; we shall take care that you shall have them all. I shall have an opportunity to shew you how Wright turns the tail of his *g*, and the other parts of his hand-writing. It strikes me that, upon that point, you will entertain no doubt. Here the mark of the old *g* remains, and the other is written in a freer hand. The *neigh* appears to be of the same character, and written by the same person. Be that as it may, you shall have an opportunity of comparing it.

Now, gentlemen, I hasten to a conclusion of the observations I mean to make upon the letters. I have endeavoured to satisfy you (or I trust I shall) that Marsden never sent one of those letters without its undergoing the inspection of a better hand than his own, or that sometimes they had the correction of a better

Digitized by Google

hand than his own. I put it to you, that it is a singular circumstance, in this case, to find a gentleman who was averse from writing, (and especially one who wrote a school-boy's hand) keeping copies of so many of his letters, which, in the nature of things, did not require a copy. Consider for a moment, whether it were natural or probable that a man of Marsden's education, and his general habits, derived from such evidence as you have already heard—was it probable or natural that he should make drafts of his letters, unless those drafts were dictated by other persons, and that he was obliged to write them over and over again, just as a school-boy does, till he had made one copy fit to be sent off by post? Suppose any body were to say to me, "Well, there is a fair doubt upon the subject"—I ask, who is to explain away that doubt? Is it not my friend who produces these letters, with whom the *onus probandi* lies? Has not Wright had possession of the whole of them, and has he not the members of his own family to come forward and prove what is necessary to support his case? I think it important to my case to shew that the cupboard, in which those letters were kept, was open and accessible to Wright. He himself has called a gentleman of the name of Batty to prove that he was in the habit of writing letters. He proved that he called by accident on Marsden one day to see him, and he was just writing a note to him, and he put it into his hand; he took it away, and afterwards tore it up; that was to shew that Marsden might have written it. Why he should have given it to him at all, when he came personally to talk to him, I do not know; but the remark I make upon that is this, namely, that my friend, the Attorney-General, knew it was important, in his case, to shew that Marsden was seen to write by somebody, and, accordingly, he calls Mr. Batty, the surgeon, to say he saw him actually writing a note. There was no witness besides, as to this part of the subject, (except as to those two deeds,) who has proved that he ever saw Marsden write without the dictation of some other person. There has been no one gentleman that was ever staying in the house who has said he ever saw him write a letter or compose a letter addressed to any body. I ask you whether Wright's clerk, or Mr. Wright himself, or Mrs. Wright, or some one of his family did or did not attend upon him to make him write a draft in the first instance, and to correct it for him when he committed any blunders, and to make him repeat it over and over again till such time as he made a copy of a corrected draft fit to be sent—just as a school-boy makes copies of his letters till such times as he makes it perfect? Evidence to that effect would alone remove that doubt. I ask my learned friend, could it not have been removed? Here a doubt has been excited, and they have not used any means to remove it. This, I will say further, that, in my humble judgment, you ought to consider these letters as determining my friend's case. The witness Bleasdale

Digitized by Google

Digitized by Google

Digitized by Google

has let out that he had, at an early period, heard that there were rumours of a commission of lunacy being about to be sued out against Marsden. It was, therefore, Wright's interest, and those about him, to endeavour to preserve some memorials such as these letters, and those deeds, that have been produced, to afford evidence against that commission of lunacy, and to keep that evidence to be adduced as to Marsden's competency. Nothing could have been more important to effect that purpose than the letters he wrote. Ought Wright then, upon this occasion, to have left that matter unsettled and open to conjecture, when you find it was plainly his interest to have collected all the evidence he could, upon that subject, to do away with even any suspicions that could be supposed to exist? Besides, it is the best evidence he could have given to shew the man's competency, that he wrote them from the suggestions of his own mind, whether those letters were upon matters of business or pleasure, it was Wright's policy to have given the best evidence he could upon the subject. It would have been very important additional evidence in support of my friend's case, if he had called two or three witnesses, who were in the room upon different occasions, when Marsden wrote such and such letters, if they could have said, "I was present when he wrote that letter, and nobody said a word to him about it at the time he was writing." That would have been some evidence certainly, but no man living can give it but Wright. He, however, is silent upon it, and yet it is strange evidence he does produce, to say it was possible to induce a timid, a retired, and unwilling person, such as Marsden is proved to have been, to write continually such a variety of letters! He who was averse from business was not very likely to copy letters, and no evidence is given to shew how they came to be made. In point of fact, no evidence has been given you but such as must satisfy you that this is altogether a part of the machinery that had been used when Wright thought those letters would come, some time or other, to be useful when the disposition of Marsden's property might be enquired into before a jury. Under these circumstances, I think I am fully justified in the remark I make, that unless you be fully satisfied in your minds that he was the genuine author of all these letters, and that they were dictated by nobody, but that they were the spontaneous effusions of his own mind, you will consider the suspicion which is now cast upon that part of the case as being conclusive of this investigation against Wright himself.

Before I come to consider the will itself, I beg to observe, gentlemen, that only one question is asked of any witness examined, about whether Marsden were competent to write these letters, and that was Mr. Sharp. I am always willing to make allowance for a gentleman stating what he believes to be true; at the same time, I must say, I was surprised that he should have done

Digitized by Google

many things acting upon those letters, or that he had done any thing that Wright did not first approve of. Do you believe that if he had taken any instructions from Marsden in defiance of Wright, that he would have been continued one day longer in his capacity of his attorney? Mr. Sharp has sworn that he never did, and I dare say, if he had done so, he would have found it a very imprudent thing. When the sheriff's bailiff went with a summons for Marsden, to attend as a juryman, Wright told him he was a man of weak mind, and that therefore he need not leave the summons, as he could not serve upon a jury. Wright, who was *major domo* of the family of Wennington Hall, and had the dominion and control of Marsden, with the assistance of Mrs. Cookson, kept him without a farthing of money. It would have been an extraordinary thing if Wright, who held the purse strings, would have allowed his attorney to do anything without his authority. As to the parole evidence, I trust you will compare those things with one another. I will make mine consist of matters of fact. You will draw your conclusions from the evidence of the witnesses on both sides, who have drawn their conclusions too. You will do so also. You will consider the facts on the other side which have been attempted to be proved—at the same time you will also weigh the facts, the circumstances, the probabilities and possibilities, as detailed by our witnesses, and I have no doubt you will balance the matter between them; neither have I any doubt, Mr. Baron Bolland, and many of their witnesses, speak what they believe in their own minds to be the truth, how ever much their evidence may be founded upon fallacious grounds; but the question is, had he the appearance of a weak man? Every one of them concur in this—Baron Bolland as well as the others—that Marsden had all the appearace of being a very weak man; and yet it was said, we had no right to be putting questions to him, as to whether he were a proficient in reading, writing, and arithmetic! He was a silly, good-natured, polite, and benevolent individual. That has been given as the character of him by most of the witnesses that have been already called; and I do not deny that that was the fact; neither Mr. Baron Bolland nor Mr. Lushington put such questions to him in conversation, in respect to morals, religion, politics, nor science, so as to ascertain whether he had the power of reasoning like a man of intellect.

I do not know, gentlemen, what to make of the testimony of Mr. Birkbeck, the Quaker. I have great respect, in general, for the sect called Quakers, to which that individual belongs; but, I must say, I have always found, that in answering questions put to them, they deal much in evasion, and seldom, or ever, give a direct answer to a question in the course of their examination. I do not know at this moment, whether he knew that Marsden was weaker, or stronger in mind, than the majority of mankind, as he always saw the conclusion to which my questions tended to lead

Digitized by Google

Digitized by Google

Digitized by Google

him; and like Bleasdale, a dexterous attorney, he always qualified his answers he gave me: he even put questions instead of answering; but that is the business of counsel, not of witnesses. He, for instance, dexterously evaded the question put to him, as to whether he believed Marsden was a weak man by saying, "I have known many a great deal weaker." He must certainly relish the society of weak men, if he knew many weaker than Marsden, rather than those above his state of intellect. He must associate with such men, more than most people would desire. He admitted, at the same time, that he never had any particular conversation with him, neither in morals, politics, nor religion, so as to know the extent of his mind or understanding. Mr. Birkbeck, however, is himself a sensible man, that I do not deny; and he is the more candid, as he says he and Marsden differed upon politics. He tells you that he himself was a Foxite; and that Marsden was a Pittite; that is no reason, however, for displaying any want of judgment. A man may either be the one or the other, and yet be incapable of displaying any sagacity. With these observations, I shall leave the parole evidence on the one side and the other, as it is for you, and you alone, to make the comparison.

Now, gentlemen, I come to the consideration of the Will itself; upon this subject, I feel that I am impregnable. I venture to say, that if Marsden were really and truly competent to select the objects of his preference, and if he could do that which he meant to do, or according as some witness said, he meant to leave handsomely to Lister, and something to Wright; then, I say the man who prepared this will for him, has betrayed him. I do not mean to speak of the technicalities of it; those are left to the lawyers to arrange for him; but the effect or object of the will, is what the testator himself ought to understand and comprehend. Now, I say, that no one who reads this will can do so without seeing, that the man who concocted it or prepared it, meant to put Lister, who was said to have been the main object of Marsden's bounty, in such a predicament, that if he dared to hold up his hand, Wright could suppress him; for the fact is, it is Wright, and not Lister, that has the absolute dominion over the property left by this will, Marsden, who is said to have been a kind, good-natured man, has not left a legacy to a single servant; neither does it display much kindness to the object of his regard, Mr Lister. Mr. Bleasdale was, at the date of the will, acting as attorney for Wright, and he had Mr. Sharp to assist him. It is Wright, and not Lister, that is, in point of fact, the object of his benevolence and regard in this will, as I undertake presently to shew you; Mr. Lister's name is merely a cover to effect that object. One would have thought, that a benevolent man, with the milk of human kindness in him, although not of powerful intellect, attached to his own family connections, would

Digitized by Google

not, amongst others, have failed to remember his servants; but so far from that being the case, it is one of the singularities of the will, that he has not left a single legacy to his servants. Then the question comes to be, who is the author of this will? Is it the man who was called courteous and polite in his manners, and disposed to be attentive to every body around him, who were friendly to him, and rendered him a service? Was it the gentleman, the defendant in this cause, Mr. Wright, who, to use the words of Mr. Sharp, was abrupt in his manners, warm in temper, contradictory, rude, and austere, who concocted this will for him? My friend, I hear, in a low tone, cuts out the word austere—be it so—I only state from memory the sort of expressions used by one of his own witnesses; and, if the defendant be not so described by him, he is, at least, so described by others. This, I say, was the will of a man who was austere and rude, inconsiderate and inhumane, from the very circumstance of his not thinking proper to leave a single farthing to his servants, and, far less, leaving any of them a suit of mourning, nor £10. a-piece, although many of them had been long in his service. Gentlemen, this is a very extraordinary circumstance, and therefore I have premised my observations on the will by noticing it.

The first bequest in the will he has made is, that of giving to John Marsden Wright, his godson, the eldest son of George Wright, of Hornby Castle, a legacy of £6,000.; secondly, he gives £5,000. to Margaret, the sister of the said John Marsden Wright. These two sums together, making £11,000., are pretty well to begin with, as legacies to two of the defendant Wright's children. In the next place, he confirms the gift of Upper Salter to John Marsden Wright, his heirs and assigns. Then he gives all his personal estate to the defendant himself, George Wright, his executors and administrators, in trust, to pay expenses, debts, and legacies. In the next place, he gives the advowson of Gargrave to John Marsden Wright, his heirs and assigns. He separates that from the estate, and he does another extraordinary thing, which I anticipate now, as it is connected with the living; he subsequently makes it a condition, that Anthony Lister shall, within three months, resign the vicarage of Gargrave to John Marsden Wright, and procure him to be presented to it; and, unless he invest him immediately in that vicarage, within the specified time, he is to take no benefit under the will. Now, gentlemen, in the year 1788 the living of Gargrave was £400.; but if you take it at £800. now, it is moderate. What was to become of Anthony Lister, if he were to give up that £800. to John Marsden Wright directly? Then he recites a reason, which is an extraordinary one to put in his will (at least to a man like Marsden), and it is this: "and whereas I am seised of or beneficially entitled to the honor and manor of Hornby, and other freehold manors, messuages, lands, and hereditaments, including valuable wood-

Digitized by Google

Digitized by Google

Digitized by Google

lands, mills, coal-mines, and quarries, situate in the said county of Lancaster, subject, nevertheless, to, and charged with, several sums of money, due on mortgage of various parts of said estates; and whereas, for some time past a system of management, under the superintendence of my confidential friend, the said George Wright, with a view to the improvement thereof, and the gradual liquidation of the encumbrances affecting the same; and I am particularly anxious that a similar system should be acted upon after my decease;" so that he was actually looking to the management and improvement of these estates beyond the grave, by the provision he here makes. And then he says, "under his superintendence, and whom I therefore intend to invest with the most ample powers in that behalf, during the period hereinafter mentioned." Now, what does he do? He bequeaths to Wright all his estates in the county of Lancaster, and all other estates whatsoever, to the said George Wright, his heirs and assigns in fee, upon trust for twenty-one years; and after his decease to permit Anthony Lister to occupy the house, grounds, and park, keeping them in repair; and upon further trust, to let and demise, cultivate, work, and manage as George Wright shall think proper, or most according to Mr. Marsden's views and intentions in that behalf.

The will then provides, that he is to set aside and appropriate £2,000., as a fund to liquidate the mortgages and other encumbrances, and for the other purposes therein expressed. You will observe that that trust is for twenty-one years, and not for life; so that it is clear Wright and his representatives were to have a right to that sum of a thousand pounds for twenty-one years, for continuing to manage the estate; that is for twenty-one years, and then it goes to his executors if he dies before that period is over; and you will find in a subsequent part of the will, that if Wright chooses to divest himself of the management within that time, he may invest it in another, who is to have £400. a-year. I mention that to shew that the £1,000. a-year which is in the first instance stated to be for twenty-one years, is to be continued to him, whether he remain in the management of it or not; and if he do not survive, it then goes to his heir, who is to have it by the provisions of this deed, from the death of Marsden, and whenever Wright dies. I asked a question yesterday, to ascertain how old the young man, John Lister Marsden, was, and I was told he is nineteen years of age next month; now, gentlemen, you will see what a hold Wright will have upon him as well as upon his father. He is to permit the tenant for life, Anthony Lister, to occupy the house, grounds, and park, and to keep them in repair at his own expense, so that Lister will have the pleasure of remaining in the mansion-house, having the benefit of the pleasure-grounds and park, but you will observe, it is to be at his own expense, while George Wright is to let and demise, cultivate,

Digitized by Google

work, and manage the whole property, as he shall think fit, or as he may imagine most accordant with the views of the deceased, and for this management he is to have £1,000. a-year, together with £2,000. a-year for the payment of debts and legacies. He is to have a right to deduct from the residue a thousand a-year for himself, but not to be considered as a satisfaction of any sums due from Mr. Marsden to him, and exclusive of all costs, disbursements, and expences, in performance of the trusts of the will. He is thus to have during the whole term of twenty-one years the entire unaccountable control and management of the whole of the estate, including the timber, the mines, the coals, the farms, the rebuilding of farm-houses and offices, and, in short, he may dig, pull down, rebuild, and do anything he pleases except the capital mansion itself; he may grant leases according to his own pleasure, so as in other words to condemn Mr. Lister Marsden, who is nominally to have the estate, to keep within the castle, without having the free use of it as to building or rebuilding, or even repairing his own mansion, that sort of management being entirely according to the pleasure of Wright. If the mansion itself were to fall down, Wright may say "You shall not rebuild it according to your plan, but I will build you one where and how I please, but it is not to be according to any other's will and pleasure." Nay, more, he may open coal mines and dig quarries in any part of the estate wherever he pleases; he may even open a coal mine under his drawing-room window, so as to render Hornby Castle uninhabitable. He is to have the sole uncontrolled power to demise and lease—to employ agents, attorneys, auditors, stewards, or bailiffs, and to pay them such sums of money, in the shape of salaries or allowances of any sort whatever, just as he may choose, without being in any manner accountable to the persons here represented as being in possession of the estate. Thus, Mr. Lister Marsden cannot call him to account for any expenditure he may make in what he may deem the improvement of the estate; he may engage his son, or his son's son, or his nephews, or any of his relations whatever, in any or all of these employments. He has the power at any time, within the twenty-one years, to grant demises or leases of all the estate except the mansion house and pleasure-grounds, for twenty-one years, at such rents as he chooses, as the words are not "for the best rent that can be had for them." It is a curious circumstance, that that power appears differently expressed in another part as to coal mines, for in the letting of them it is to be "at the best rent that can be had;" but to no other part is that expression applicable.

The ATTORNEY-GENERAL.—I beg your pardon—there is a clause, I think, as to "a duly approved rent," which over-rides the whole of the property.

Sir J. SCARLETT.—No, I think not, let me see the original. [This was handed to the learned counsel.] The words are these,

Digitized by Google

Digitized by Google

Digitized by Google

"and I do hereby expressly declare and direct that it shall and may be lawful for the said George Wright, at any time during the said term of twenty years, to grant leases of all and any part of my real estates, for any term not exceeding twenty-one years in possession, at such yearly rents, (without taking any fine or premium:) and under and subject to such covenants and stipulations on the lessee's part for the management, cultivation, and improvement of the premises therein comprised, as my said trustee shall think proper and expedient." He is then free to grant, and to determine the covenants under which they shall be granted.

Now, suppose he lived to the very last year of the twenty-one years, he may grant leases for other twenty-one years, or he may tell his own sons or sons-in-law to choose their own covenants; he may do all this, without the least concurrence or interference of any landlord who is to receive the rents. I would be glad to know who would accept such an estate under such terms? He can have none of the land cultivated according to his own fancy; no covenants to prevent the tenant cutting down woods, or opening mines, or digging quarries, which this universal manager has had in his power, or his agents, to bestow, and which the landlord may not approve. That is not generally what any tenant can do, but still Wright has the power to bestow it—not saying how he may exercise it; that is the power given him.

Now, gentlemen, what do you think of this other proviso? No man, whatever, is to have the liberty of riding, hunting or shooting over the premises without Wright's leave; so that if Mr. Lister Marsden should walk out with his gun, he may say, you must cease, you have not got leave to do so. What has that to do with the management of the estate? As to the giving leave to hunt, shoot, or to fish, ought not that to belong to the occupier of the mansion; these being privileges having no regard to the management of it? Why should Bleasdale have given those privileges to Wright alone, or those he may appoint? And yet I see that no man is to hunt, shoot, or fish, without this leave!—Now what is to be done with the remaining produce of the estate? Suppose four or five thousand pounds is the amount of the estate—one thousand pounds is to go to Wright—two thousand pounds is also to go to him as a fund to liquidate mortgages and other incumbrances; and the remaining thousand or two thousand, Wright may dispose of either in carrying on any improvements he may suggest or approve of, or in works of any sort whatever, or in quarries or mines to any extent he pleases, without being accountable to Lister Marsden—or he may divide the greater part of it into salaries or wages to any persons he may employ. For that surplus he is not to be accountable to any one occupying the mansion house. That is not all; the two thousand a year is upon trust to pay debts and legacies and such other purposes of the trust as are after mentioned. What are those? Suppose Wright

Digitized by Google

should exhaust the whole of the remaining thousand or two thousand a year in improvements of the estate, in opening mines digging quarries, paying attorneys' bills, or agents, or stewards, or bailiffs, what is he then to be at liberty to do? He may mortgage the real estates or sell any part thereof, (except the castle, offices, &c.,) either for discharging debts, legacies, or encumbrances, or the expences of further improvements. There is no evidence of any personal estate to any amount. He may transfer the present mortgages, and place them in the hands of another; or, if there be any surplus, he is to be at full liberty to lay it out in the purchase of other lands; and if he choose to play this game he may take care that if the estate should even come to himself or to his son or his heirs, he may take care that it may come to them in the best possible condition. He may, therefore, lay out the surplus either in the improvement of the lands, or in the purchase of new lands.

Then at the expiration of the said term, of twenty-one years, he may convey the estate to the use, that George Wright his assigns may, during his life, receive a £1000. yearly, subject to the Rev. Anthony Lister for his life. Remainder to the trustees to preserve contingent remainders—remainder to Charles John Lister for his life—remainder to trustees to preserve contingent remainders—remainder to his first and other sons in tail male—remainder to the use of John Marsden Wright for life—remainder to trustees to preserve, &c.—remainder to the use of his first and other sons in tail male, with the ultimate remainder to the use of the right heirs of John Marsden Wright for ever!! All this is to be the result, in case the son of Lister Marsden should die without issue; that is extraordinary, and, therefore, I should advise that young gentleman who now sits here, (alluding to John Lister Marsden), to marry as soon as he can, and to have heirs to the estate. A male issue he must have, as female issue cannot inherit the property; that I suppose is the reason why my friend exhibits him here as a fine young man.

The ATTORNEY-GENERAL.—No, it is not the reason; but the reason is, that my friend said at York, he was a very sickly youth, whereas you see he is not so.

Sir J. SCARLETT.—If I said so, that must have meant to have been applicable to the time of the will; that must have been my instruction. At the time of the will being prepared, it appeared he was selected to be substituted in place of the father, because it was thought possible that he might have been the worst life of the family; but be that as it may, if he should die without issue, John Marsden Wright, if his father be a careful manager, may, by possibility, have all the accumulation of this large property, so that he, the son, will have nothing to do, at the death of his father, but to take possession: whereas, Mr. Lister has yet to pay £27,000 for Wennington Hall; while at the same time, he was to give up

Digitized by Google

Digitized by Google

Digitized by Google

the living Gargrave, within three months after John Marsden's death, and procure him to be presented to it. Thus, gentlemen, you see how the lord of the manor of Hornby is placed. There he is, if he choose to live in a castle, like one of those castles that we read of on the banks of the Rhine, fair to look at, but inaccessible; where he may be secluded from society, or rendered uncomfortable according to the caprice, whim, or avarice of the manager. There will Hornby Castle stand to be admired; and although situated near the public highway, yet surrounded by a wood, he will live there like one of the giants of old, without being permitted to have any communication with the surrounding country; there he may live, subject to that sort of control which this will describes, during the remainder of his life; obliged as he is to support and uphold the mansion-house, and to keep the pleasure grounds in repair, at his own expense: however reluctant he may be to be so charged. There he is to remain without the least enjoyment of the usual sports of the surrounding country; every thing is to be preserved, whole and entire, for the future enjoyment of John Marsden Wright.

Now, gentlemen, if Mr. John Marsden had been informed by old Bleasdale (suppose he were competent, in point of fact, to have made a will) if he had been possessed of information, as to the consequences of such provisos, by that attorney who, in conjunction with Wright, prepared this will for him, must he not have seen, that Wright, not Lister, was the person to be benefited; would he not, if possessed of common sense, have perceived, that he was making such a will, from beginning to end, as he never intended to make? He would have seen if he had had half of the sagacity that a man should have to make a will, that Lister was made a mere stepping-stone and scape-goat, for Wright to ride off upon. Would he not have seen the contrary of what my learned friend says, that Lister was to be made the object, and not Wright, of his affection and regard? What might happen, do you think? If Wright should feel inclined to dispose of the trust, and if Lister Marsden should make a rival of him, or should they become jealous of one another, he might, by a deed or will, invest some other person with the liberties, privileges, and franchises he himself had. He has the power to give £400 a-year to that new trustee; and notwithstanding he himself retired, he is to have his £1,000 a-year, so that this additional sum of £400 may be taken out of the rents and profits of the estate. What do you think of this? Then Wright may be supposed to manage it altogether; for then that new trustee, agent, or steward, is to give Wright for his sinecure £1,000 a year, besides reserving for himself £400 a year. Even Mrs. Wright may have the power after his decease to pay whomsoever she pleases as a trustee, or his executors themselves may appoint one. What can possibly be the meaning of all this? Should not Bleasdale have said to Marsden, "why do you think of inserting such a clause as this

Digitized by Google

upon this subject, for it is directly contrary to those intentions you have previously expressed, unless you think that Mr. Lister Marsden should have no voice in these matters, nor any interest in them whatsoever? Why should you repose all your confidence in your agent or manager; or on those he may, on some future occasion, appoint? Even his widow may take out administration; or some executor may appoint a trustee, and give him £400 a year, accompanied with all these powers." Would any man of sense, or of common sagacity, submit to such a clause as that? I deny it; it is impossible. You see, that at the end of twenty-one years, a new trustee, or Wright himself, is to make a conveyance, so as to sell whatever portion of the estate he pleases, except the mansion-house and pleasure-grounds. There is a distinct declaration, that Wright is not to be accountable to Lister Marsden and his son, for twenty-one years. Mr. Bleasdale knew better; he had a design in all this. Mr. Lister Marsden, the father, takes the estate for life only. He has been proved to have then had himself two sons and and a daughter; but here the eldest son only is selected, and he has it only for his life, and his male issue: females cannot have it; his brother cannot have it; if he himself fail in having male issue; it then goes to John Marsden Wright. Then it goes to his issue male, and if they fail, then he is to have it in fee. Thus it certainly comes to Wright's family ultimately; so that if John Marsden Wright were to die, Mr. Lister Marsden, the tenant for life, can do nothing, and the present young man, after his father, can do nothing. If he live, and have no issue male to take the estate in tail, who is to take it? It comes to the remotest branch of Wright's family, in preference to Lister's family; although it be given to Lister the father, for his life, and his son, neither of them can demise it. To their male issue they cannot dispose of it till the twenty-one years have expired. But if not, then John Marsden Wright has it, and if he have no issue, then it comes back to him in fee. If he die, then that remainder in fee descends to his heir-at-law, and if he had no son, then the heirs of the father would get it. I should be glad to ask my learned friend why should all this be so provided? Gentlemen, do you understand this? It might have been asked of Marsden, "if your godson should not have male issue, would you intend it to go to the remotest branch of the Wright family, or that it should come back to your own family?" If the old man had understood that, would he have made that provision in his will? The pretence is, that Lister, the father, was first to take; then comes the son, but Wright's son was to have a very handsome provision as it gives him £6000 as a legacy, and he is to make Anthony Lister give up the living of Gargrave, worth about £800 a-year. All that was pretty well; now you see in what situation this will stood. Mr. Lister, the supposed object of his bounty, owes him a large sum of money for Wennington Hall; he has the living of Gargrave, which he must surrender

Digitized by Google

Digitized by Google

Digitized by Google

within a certain time to John Marsden Wright. He is to procure him to be presented to the living in the usual manner. The house and grounds are to be kept up at his own expense, but then he has no means of deriving one sixpence for the period of twenty-one years after the death of the testator, without Wright's pleasure. Gentlemen, let me ask you the necessary consequence of this? This young man is not of age. When he does come of age, and if the father die, and the young man have attained twenty-one, or twenty-two, and Wright, the old gentleman, choose to retire upon his £1,000 a year, and appoint his son the agent and manager, at a salary of £400 a-year, will he not say to Lister Marsden "is it worth your while to live here? You cannot live with comfort; I shall not permit you to hunt, nor shoot, nor fish." Certainly he could do so, and certainly it would not be worth John Lister Marsden's while to retain it under such conditions, and, therefore, he would consent to sell it for a few thousands. God knows what may happen in future, but, at all events, whether this be good reasoning or not in this case, it really appears that Wright might soon possess all Mr. Lister Marsden's interest. The age of the young man is such (and Mr. Marsden might have lived a few years longer, as he was only 68 when he died,) and if Wright survived him, and if he had been 21 years of age, and married, although delicate he might have had a son, and that son of Lister, he might have had issue, and might have been able to dispose of the estate, but if otherwise, and if I be a true prophet, Wright's family would have got it for a mere song. Of this, however, I am sure, that neither Lister nor his son can live in it with any degree of comfort.

Gentlemen, I am now drawing near to the end of my case; a case most important in point of value, and also most important in regard to the promotion of public justice. I put it to you whether, sitting in that box, you will sanction, by your verdict, the possession of an estate, under all this combination of circumstances, by the present occupier, by this will, concocted as it has been between the defendant and that attorney, Bleasdale, who appears to have been the intimate and bosom friend of Wright, from first to last. Wright knowing the condition of this man, the testator, and he being admitted by all to be of weak mind, I say the conclusion to be drawn from all these facts is, that he was perfectly incompetent, and not of that disposing mind which the law requires a man to have to dispose of his property; he never having so much as ordered a pair of shoes of a shoemaker, nor a suit of clothes of a tailor, and never having been known to have transacted any business, nor to have entered into any contract, of his own mind and accord, without being under the control of Wright, from the beginning to the end. Gentlemen, I shall call a great variety of persons, some of whom are distant relations, who expected nothing from him, who will tell you that he never, during

Digitized by Google

his whole lifetime, advanced, or progressed in judgment or information beyond a state of childhood, but was destined by nature to remain a child, not only at the age of twenty-one, but even at the age of sixty-eight. There is a sort of folly which is common to children, which with them is not a disease, but if it last down to a late period of a man's lifetime, it becomes a disorder, and incapacitates him for all useful purposes, either to himself or to others. There is not a single witness who has not delivered to you his opinion that it was at least his impression that he was a very weak man. Even the witness, Miss Sheepshanks, ingenuously admitted that if she were to divide mankind into three classes, she would put him amongst the lowest. She has told you that she cannot venture to divide mankind into any more than three classes, so that she places Marsden at the very lowest. My friend says, why did I not put that question to Mr. Lushington? I may answer that by saying, I thought it unnecessary. I thought I need not do that, as I put it to that lady, because, in putting questions to her on the former occasion, she herself, I think, made the proposition of dividing mankind into classes, and upon that I thought it right to ask her in which of the classes she would put Marsden, and she answered me, she would put him at the very lowest. If it be asked, what, according to law, is the meaning of a sound disposing mind, I should say, that till a boy be fourteen years of age, he shall not demise his estates—and why? Some of them are as clever as men, or persons at a much more advanced age, but still there is one intention of the law which is wanted, namely, the power of inclination or volition. If a child be clever in the nursery, yet still if he were to remain in it during his whole lifetime, he is only fit for the nursery. I will read to you the evidence of Dr. Campbell, as taken upon the former trial of the issue, at York, and from his evidence you will find he was of opinion, from the first to the last, that Marsden actually required a nurse, or a person to act as a committee of him. Such a man, I should say, has not a competent will of his own. Dr. Campbell's evidence will be given to you in writing, and you will also learn from it that he was desired by his mother, Mrs. Bayley, in her last moments, (she having married Col. Bayley) to call upon him and that she expressed her regret that her son John had been weaned from her without her having given him any offence. The probability is that she did not receive Mrs. Cookson as a friend and companion; there were circumstances which made that impossible; neither she nor Colonel Bailey could consent to receive her. His mother was desirous to see him before her death. Doctor Campbell accordingly went to ask him to come to see his mother, and he said, "I will not go to see her—she never behaved to me like a gentleman." Doctor Campbell also states it as his opinion that that was owing to the influence of Mrs. Cookson, and he accordingly came away with the impression upon his mind, at that

Digitized by Google

Digitized by Google

Digitized by Google

time, that it was the influence of Mrs. Cookson that prevented him coming to see his mother. It has been stated too, that he complained of his mother having neglected his education. Now, there is no proof of that; neither is there any proof that he was capable of receiving a better education than he had had; on the contrary, the fact is entirely the other way. At the age of twenty-two years, it will be proved that he was a perfect child in Mrs. Cookson's hands, and as she was not received by his mother, I dare say she conceived resentment, and therefore prevented Marsden visiting his mother. Nobody would have objected to her taking care of the young man if her conduct had been respectable and proper, or rather, it would have been most advisable if she had got a proper person, such as a clergyman, to have undertaken to do so. Such conduct would have been laudable, but it was perfectly the contrary, as it was found that she had put him under the control, not merely of herself, but of this menial servant, who obtained an influence over her in consequence of her amour with him. It was natural to suppose that that conduct would create resentment.

Then, gentlemen, you will have to consider how the disease of his mind was first ascertained, and that he was in such a state of incapacity, and of such discernment and judgment, that it grew along with his growth, even from his cradle down to the time he made his will. If you be of opinion that he could not comprehend great subjects, nor subjects of this sort as to arranging the interest of the individual he meant to provide for, then the law would say he was not of sound and disposing mind and memory. Then if you doubt that, the next question will be, was his strength of mind sufficient to resist the influence of the gentleman who had got the entire control of him; not only in regard to all his desires, but also of his purse, his estates, and his property of every description; but also of his person, aided by a skilful attorney, the intimate friend of that gentleman; and who was playing into his hand, in regard to the will he had made? If you be of opinion that that will was made under that sort of control, then you will say it was not his will, as Bleasdale had got it prepared and executed; and had introduced into that document, such provisoes as to leave Wright entirely as the person to be ultimately benefitted. That is another ground for your thinking that although he were capable of certain acts, yet he was perfectly under the control of Wright. If he were actually so imbecile as not to understand it at all, or if he were capable of understanding certain things, and not others: or if he were unable to resist control, then the plaintiff, whom I represent, will be entitled to your verdict.

Digitized by Google

EVIDENCE FOR THE PLAINTIFF.

Mr. Thomas Casson was then called.

SIR J. SCARLETT.—We shall begin with those witnesses who are to speak of Marsden at the earliest period, but of course we must occasionally be under the necessity of mixing them up with some witnesses who speak to both periods; but we will begin with the earliest first.

Gentlemen, before we examine this witness, there is one observation which I find I omitted. I examined Mr. Sharp as to Dr. Lingard; he is a gentleman of great attainments in literary composition. I think Mr. Sharp must have mistaken him in his evidence, or he has shewn Marsden to be a man of bad memory. I shall shew that Dr. Lingard never dined with Marsden after 1816. Mr. Sharp represents it to have been two or three years before his death, which happened in 1826. Mr. Murray died in 1822, so that he brings it to a short period. Dr. Lingard will prove to you that he never dined with him after 1816, and that he never repeated at Marsden's table one word that passed at Murray's, who died in 1822. The conversation between these persons must have been before the year 1822, so that Mr. Sharp must have stated what was not true, or there must have been some error in point of memory. Mr. Sharp knew that in Chancery Dr. Lingard had been examined on the other side, and that he had given evidence of that description.

Mr. Thomas Casson sworn. Examined by Mr. CRESSWELL.—How old are you?—I was seventy-one in July last.

Where do you live?—At Liverpool.

Did your parents live in Lancaster?—Yes, they did.

You were brought up in Lancaster?—I was.

Do you remember Colonel and Mrs. Bayley in Lancaster?—Very well.

Was your father's house near theirs?—It was next to theirs.

Did you know John Marsden?—Very well.

How old were you when you first knew him?—Nine or ten, or thereabouts; I cannot say precisely.

That would be about the year 1773 or 1774?—Yes.

Were you at school in Lancaster?—Yes, I was.

The Free-school?—Yes.

Was that school kept by Mr. Watson, the clergyman?—Yes.

Do you remember the usher?—Very well.

His name was Winfield, I believe?—Yes, it was.

Was John Marsden there?—Yes.

Did you ever go with him to school from his mother's house?—Yes, I have frequently taken him to school.

Was he older than you?—Older.

How happened you to take him to school?—At the request of his mother, otherwise he would not have gone.

Did they do anything to coax him to go?—He would never go to school; they used to give him something to induce him to go.

Whereabouts did Colonel Bayley live?—In Bridge-lane, with the front door into Church-street.

Digitized by Google

Digitized by Google

Digitized by Google

Is that the first lane after you leave the house the judges live in?—Yes, the lane leading down to the old bridge.

How old was Marsden at that time?—According to my own opinion, I thought he was two, three, or four years older than me; he was a good deal bigger too.

Did he sit in school with the other boys, or in any particular place?—He always sat in one particular corner when he was at the school; for the most part he sat with the usher in his pew or seat.

Did he say his lessons with the other boys?—Never.

How did the master treat him; kindly or roughly?—Always kindly.

Do you know whether he succeeded in making any progress in his learning?—He could not read when I was at school. I never heard him read in my life.

How was he treated by the other boys at school?—They used to make a fool of him, and call him nicknames, and they used to get flogged for it.

Was there any particular game he was fond of?—Bell-ringing was his hobby; he was always ringing bells.

That was his game?—Yes.

Had he real bells he was ringing?—No; he rung in the air without any bells at all, or bell-rope either.

How long did you remain at school with him?—About three years, to the best of my knowledge.

Was he there all the time you were at school?—Yes; all the time.

Did you ever see him after you left school?—I saw him at Kirkby Lonsdale, 34 years ago. I never took any particular notice of him. I once or twice saw him at an election, but was never near him. The last time I saw him was in Kirkby Lonsdale church-yard.

Who were with him?—Wright, and another gentleman I did not know. Marsden followed behind him, at the distance of fourteen or fifteen paces, and they made a stand in the church-yard, and Marsden made a stand likewise, but took no part in their conversation. He was as far behind as I am from the jury. When they were going away, Wright said "Now, Marsden, we are going," and Marsden said he heard.

Is that the only time you had seen him since you left school?—Yes; the only time.

When you were at school with him, what was your opinion of his understanding?—We all considered him quite simple: all the boys in the school.

Cross-examined by the ATTORNEY-GENERAL.—How many boys were there at school?—I cannot say.

About how many?—About a hundred on both sides; under both the high and low master.

Whereabouts in the town was the school—where it is now?—Yes; where it is now; by the church-yard.

Were the boys who went to school, of all sorts of ages?—Yes.

How many classes were there?—There were all sorts of gentlemen's sons and working people's sons.

How many gentlemen's sons were there?—There were three or four of Mr. Thomas Salisbury's sons.

Where did he live?—Just below the vicarage.

What was he?—A merchant.

Any body else do you remember?—There are very few living; there are only five living now that were at school with me at that time.

Digitized by Google

What year were you born in?—On January 22d, 1763.

Do you mean to say that there are only five or six alive, that you know?—Not that I know.

What did they learn at that school?—Greek and Latin.

Did you learn Latin?—No; English, writing, and arithmetic.

You say that Marsden could not read at all?—I never heard him read, in my life. The master tried him frequently, but I never heard him read.

What did he try him at?—With a book, as a school-mistress might try a child. To the best of my recollection, it was the *Pleasing Instructor*.

He could not read at all?—I never heard him read, during the time he was at school.

By GURNEY, B.—When he was with the master, could he read?—He kept him for a few minutes, and could make nothing of him.

By the ATTORNEY-GENERAL.—In your opinion, he could not read a single word?—In my opinion, he could not do it then.

Nor write a single letter?—Not then.

He could not write or read a single word?—He went a few days up stairs to the writing master. I saw one of his books, and I found he could not make one thing or other of it. One copy was all strokes. At the first beginning, there were some straight, and some crooked, and some in one shape, and some in another; they were all shapes.

He was then about fourteen?—I suppose he might be three or four years older than me.

You never expected he would either read or write?—He could not then. I never heard him read a word; he never was in a class at all.

I think you say you saw him, thirty-four years ago, at Kirkby Lonsdale? Yes; in the church-yard.

At the elections, you only saw him at a distance?—Only at one time, and that was about the election.

Did you ever see him afterwards, at an election?—I did.

Did you ever see him after you left school, except at Kirkby Lonsdale?—Once; at Hornby.

You say that was at a distance?—I saw him at the elections, when I was at a distance from him; two or three different contested elections.

Where was he, when you saw him at a distance?—Coming in his carriage with his freemen into town.

Have you seen that, two or three different times?—Yes; at two or three contested elections.

Were his freemen, as you call them, on horseback, or not?—Yes; there was a large concourse of them. I could not make any particular remarks on that.

With his freemen with him?—Yes, behind him; he was in his carriage.

Was he not leading the party?—He was coming before them all, in his carriage.

You were then here to vote; are you a freeman?—I am.

You came here to vote, when you saw him in that way?—I lived in town.

How long did you live in Lancaster, after the year 1774?—Nearly all my lifetime, till now.

When did you go away?—Seventeen years I was out of Lancaster: and reside at Liverpool, when I am at home now.

I want to know this—you have been away seventeen years?—Yes; I have.

And all that time you have been living at Liverpool?—Yes.

Digitized by Google

Digitized by Google

Digitized by Google

You were not examined at York about this matter?—I was not.
Were you there?—I was there.
You went there?—Yes.
Did you go away before the trial was over, or after?—I went after.
Who came for you to Liverpool at that time?—Mr. Parr subpœnaed me.
Who is he?—I don't know, but I will look at the subpœna.
Sir JAMES SCARLETT.—That was Mr. Hamilton Parr.
Is that the subpœna?—Yes.

Mr. William Wakefield sworn. (Examined by Mr. STARKIE.)
You are a watchmaker, residing in Lancaster?—Yes.
What age are you?—In my seventieth year.
Were you formerly at the free-grammar school, at Lancaster?—Yes.
Do you know at what time you went?—Very early. I might be about eight years of age at that time. I continued at school many years.
How many years might you remain there?—The usual duration.
GURNEY, B.—How old were you when you came away?—I was off and on at various times.
How old were you when you came away the last time?—About fifteen years of age.
By Mr. STARKIE.—Do you recollect John Marsden being at school there?—Yes.
Was he there at the time you first went there, or did he come soon afterwards?—He was there when first I went.
Was he under Mr. Sisson?—Yes; he was the usher.
Do you recollect Marsden's age at that time?—He was four, five, or six years older than me, according to my judgment; I know he was older than me.
Did he come by himself to school?—Col. Bayley's servant used to bring him to the school, and fetch him back again.
Where did Col. Bayley live in Lancaster?—Just below the judges' lodgings.
Did you ever know of his coming by himself to school, or without a servant with him?—I never did.
Where did Marsden sit, when he was at school?—He used to sit in the pew belonging to the usher.
In Mr. Sisson's pew?—Yes.
Did he associate and play with the other boys at the school?—Yes; he did with a few boys, and absconded sometimes, and the servant used to bring him back again.
When he went out with the other boys?—Yes.
Did you usually see him play with the other boys?—Yes.
And join in their sports?—Yes. We had different classes to go out by ourselves sometimes. We did not go out altogether.
Did you go out with him sometimes?—Yes, various times; I have been out with him, but never associated with him, in point of play.
How happened it that you did not associate with him, or that he did not associate with the other boys?—I did not say that he did not associate with the other boys, but I did not, as he had some of the school-boys in particular sent with him, to take care of him.
Mr. Sisson used to send a guard or two to take care of him?—Yes, because he had absconded, and run away home.

Digitized by Google

How used he to behave himself whilst he was in the school?—When the bell was ringing, he used to spring up in raptures and cry "ding dong" and so on, and when he heard the church bells, the usher was obliged to make him quiet.

When he heard the bells ringing, how did he do it?—He used to put up his hands in this way—imitating the pulling of ropes. (Witness demonstrating it.)

Did he accompany that with any noise or sound?—Yes, he cried "ding dong, ding dong," and then the usher made him quiet.

Was he in any class with any other boys, or by himself?—I never saw him in a class at all—I never heard him read, all the time I was there.

How did the other boys behave to him?—Very civilly.

In your judgment, was he a boy of much mind, or what was your judgment of him?—He always went by the name of "Silly Marsden" all the time I was at the school.

What was your judgment as to his mind; was it weak or strong?—He was weak enough, I believe.

Cross-examined by the ATTORNEY-GENERAL.—You are about seventy now?—Yes.

Now, consider a little, you would be about fifteen years of age when you left school?—Yes.

How long was he there, that you know and can speak to?—He might be two or three years during the time I was there.

Was it the earlier or latter part?—The early part.

How old was he when he quitted school, according to your best recollection?—I cannot tell; he was many years older than me.

I want to know whether he was fourteen, or fifteen, or sixteen, when he went away?—He would be very likely of that age.

By GURNEY, B.—What age do you think he was when he went away?—About sixteen, or more than that.

By the ATTORNEY-GENERAL.—Were you older than ten years when you saw the last of him at school?—I was at school when I was eleven years of age likewise.

What age were you when you first went?—Seven or eight years.

How long did you stay after you first went?—I cannot say; he might be there perhaps three or four years.

And at that time he had learned to read?—I never heard him read.

Did you learn to write?—Not there.

Do you know whether he learned to write there?—No, I do not.

Did you ever hear him try to learn?—Never.

How do you know he could not read?—I do not say that he could not read, but I never heard him read.

Did you ever see him go up to the master to read?—No.

In short, he was in the school doing nothing?—Yes; out of the way from home; out of harm's way, doing nothing.

And during all the two or three years that you knew of his being there, was that the way in which he was treated?—Yes.

Merely kept out of harm's way?—Yes.

In no class with the other boys?—I never saw him.

And never read to the master by himself?—I never saw him do so, nor heard him.

Digitized by Google

Digitized by Google

Digitized by Google

Re-examined by Mr. STARKIE.—Where did he sit?—In the usher's pew, which holds about three people.

Did any other sit there besides the master?—He used to sit in the middle; and a boy on one side, and a boy on the other, to keep him quiet.

Mr. Joseph Bell, a Quaker, on his affirmation, examined by Mr. ARMSTRONG.—Where do you live now?—Near Whitehaven.

How old are you?—Seventy-five.

You were born in this town, I believe?—Yes; in the year 1759.

Do you remember living in Penny-street with your mother?—Yes.

About what age were you when you went to live in Penny-street? I believe, about five.

That is almost as early as you can recollect any thing?—Yes.

Do you recollect a widow lady of the name of Tatham coming to live in the neighbourhood of your mother?—About the same time I had come to live there.

Were you in the habit of seeing the late Mr. Marsden at Mrs. Tatham's house?—Frequently.

Were you invited to meet him there?—There was a great intimacy between Mrs. Tatham and my mother's family, and I was frequently invited into the house.

About what age was Mr. Marsden when you first became acquainted with him?—Very soon after I went there. He was a year older than me. I believe he was born in 1758, and I was born in 1759.

Did you know Mrs. Marsden, his mother, who afterwards married Colonel Bayley?—Yes.

By GURNEY, B.—Did you know her before she was married to Colonel Bayley?—Yes; I knew her, but I was not acquainted with her.

By Mr. ARMSTRONG.—Did you go to school at the Free-School?—Yes.

Was Mr. Cockin the writing master?—Yes, he was.

Did he teach writing and arithmetic?—Yes.

Was the writing-room below?—No; over the grammar school.

When did you go to Mr. Cockin's?—I was there in 1772 and 1773.

In one of the years when you were there, did John Marsden come to Mr. Cockin as a scholar?—He did.

Are you able to say whether Mr. Cockin took pains with him?—He used to take a great deal of pains with him; he had him opposite to him at his own desk.

Were you at this time very intimate with John Marsden?—He knew me from the first acquaintance; he used to come to me for protection, when the boys annoyed him.

There was no companionship between you, but he joined you for protection?—Yes.

Did Mr. Cockin apply to you, to take pains and teach him?—He said to me that he did think of doing good himself to John Marsden, but he could not do so, and he would be obliged to me if I would take the trouble to teach him; that he saw he drew more to me than to the other boys of the school, and that he wanted me to try and teach him, as he could make nothing of him.

At this time, you were fourteen, and John Marsden fifteen?—Yes.

Did you, in compliance with Mr. Cockin's request, try to teach him arithmetic?—Yes, I did, to please Mr. Cockin, as well as John Marsden.

Digitized by Google

Did you take great pains with him?—I did take considerable pains with him.

Were you at all successful?—I was not, indeed.

How far did you attempt to go with him?—I began with him often, and for a while, I expected that I should succeed, for I engaged his attention better than Mr. Cockin could.

Well?—He then came from the grammar-school to Cockin's about eleven o'clock.

Ultimately could you succeed?—I found there was no progress made at all?—He did not recollect what he had done before.

You tried him in addition?—I found him very indifferent.

Did you try him in multiplication?—I did.

How far was he in addition when you thought he could make some progress?—Simple addition. I do not recollect that ever we could get to more than two low numbers, and I thought it appeared to be certain that he did not know whether he was right when it was done.

Did you afterwards do sums for him to take up to the master?—Yes; it was quite indifferent what we took up, as they were equally incomprehensible to him.

Did he know the figures?—From one to nine, but he could not combine them; he knew their different names.

Could he copy the sum when you marked it out for him?—I dictated to him what to put down: I did it, and he wrote it down; the result was mine, but Mr. Cockin was aware of it.

What kind of dispositioned boy was he?—A very good boy.

How was he as to courage?—Very timid.

Was he easily persuaded or not?—Very easy; the only good one could make of him; I used to find the sum for him.

According to your judgment, what was his intellect at the time you knew him, up to fifteen?—We had very little intercourse between us; I knew him a little afterwards.

What do you say as to his intellect?—His air and general manner indicated a vacancy, a mental incapacity.

In your judgment, as far as you ever did know of him, was he capable of writing a rational letter?—No; not so long as I knew him.

During the period you knew him, up to fifteen, was he left to himself?—He was always with a servant in the street, who had him under observation. I have frequently seen him with Miss Tatham, and I suppose she had always some charge of him; I understood so.

Was that the daughter of the Mrs. Tatham, who lived next door to your mother?—The eldest daughter.

Do you know whether that was the lady who afterwards went to live at Wennington Hall and Hornby?—That was the same.

From all that you saw of him, in your judgment, had he a mind capable of transacting business?—(No answer.)

ATTORNEY-GENERAL.—It is not usual for people to transact business at that early age.

Cross-examined by the ATTORNEY-GENERAL.—You did not go to the grammar-school?—No.

How long were you with him at this reading and writing-school?—One season.

How long is that?—Six months.

Digitized by Google

Digitized by Google

Digitized by Google

Could you fix upon the year when it was?—In 1773 or 1772; the impression of my mind is, that it was in 1773.

Now, you say he made no progress at that time; could he read?—I never saw him read, nor did I ever see him write, but upon a slate.

Did you ever see him write anything but figures?—No.

Did he write them well?—Yes; they were legible. There could be no mistake as to the intention; there could be no mistake as to what he meant.

Could he write figures well?—He wrote his figures well; they were perfectly legible.

Did you never hear him read any thing?—Never, nor evera ttempt to read.

By GURNEY, B.—You did not learn to read there?—No.

By the ATTORNEY-GENERAL.—What book of arithmetic did you use?—Mr. Cockin's book; we all went by the one he published.

Did you ever try whether he could read Cockin's book?—I never saw it in his hand.

Did you know whether he could read, or not?—I have no reason to think he could.

Is it usual to try to teach arithmetic before people can read?—I have no reason to think he could read, but I have, also, no reason to say he could not.

In your opinion, could he read, or not?—I do not think he could.

Did you learn to read before you learnt arithmetic?—Yes.

How many years ago is it—when did you begin to learn arithmetic?—When I was about six years of age.

Is it usual to teach a boy arithmetic before he can read?—No.

Was Marsden the only boy that was put to school to learn arithmetic before he could read?—I only thought he could not read.

Was it your opinion, at that time, that he could not read?—Yes, it was.

Was it on that opinion that you then acted?—Mr. Cockin set the question.

You said that Mr. Marsden could not read?—I never saw him with a book in his hand; I do say so still.

But did you try to teach him arithmetic, thinking that he could not read?—I do not think I thought about it at all.

He took figures from your dictation?—Yes.

Upon a slate?—Yes; we had nothing else; he had no book at all—nothing but a slate.

And he took the figures from your dictation, and carried them away, as the sum, to Mr. Cockin?—Yes, he did.

You said that Mr. Cockin set him the sum?—I might say that positively.

Did you say Cockin kept him six months, teaching him in this way?—I do not state the exact time. I told you the term was six months; but whether he was there all that time, or not, I do not know.

How long did he remain taking down figures by your dictation, and carrying them up to Mr. Cockin as the sum?—I do not know how many months he continued doing so.

Do you think that that went on for two or three months?—Yes; I think it might; and if he stayed so long, he did so.

Have you an opinion that he staid so long?—He might be there three months, or six months.

How soon did he begin to take figures from your dictation, and handing them up to the master?—I began in a fortnight.

That was Mr. Cockin's arithmetical education of him, was it?—Yes.

Digitized by Google

And he was fit for nothing else?—No, I do not say so; I did not give an opinion of his fitness.

Did Mr. Cockin ever try whether he could read, or not?—I never saw him with a book in his hand, nor attempt to read.

Were you at York?—No; I was here the last time, but was not examined.

Mr. Fraser then verified the evidence of Mr. John Willan, as given upon the trial at York, which he read as follows.

Mr. John Willan sworn (a blind man). Examined by the ATTORNEY-GENERAL.—Were you at school at Kirkby Lonsdale?—Yes, I was.

What was the name of the master?—The Rev. John Wilson.

A grammar school?—Yes, a grammar school.

Were you afterwards an usher there?—I was; I became an usher there in 1776.

Do you remember John Marsden coming there when a boy?—Yes, he came in 1773 or 1774.

Were you well acquainted with him?—I knew him among the rest of the boys.

What sort of capacity did he appear to have?—He was very weak and simple and he could not make any progress much in learning.

Did the master, according to your observation, bestow as much pains on him as on other boys?—He certainly did; he bestowed all the pains in his power, and attempted to drag him forward in the Latin tongue, but found it impracticable.

Do you remember Mr. Wilson putting him under your charge?—Yes, in the latter end of July, 1773.

What was you to do with him?—To put down small letters and fables.

In short, to teach him English?—Yes, to teach him spelling, and to repeat to me once or twice a-week, and to learn English exercises.

John Marsden?—Yes.

To repeat what?—To repeat tales, false-spelling, that he should be called up to Mr. Wilson, that he might hear him.

And to notice his false spelling?—No, I corrected his errors, and then he had to repeat those to Mr. Wilson.

You were to correct his false-spelling, and put the words into proper syllables?—He was to repeat it correctly to Mr. Wilson.

Did you find him capable of learning?—He made little progress, and but a little. I took every pains in my power with him, and he made but little progress.

Was he able to count?—No, Sir, we did not teach any writing or arithmetic at the school, at that time.

But did you take pains to ascertain whether he understood any figures?—I once had occasion to purchase for him half a hundred quills, and he was not able to count them after repeated trials.

Did you make a trial?—Yes, I did; I requested him to do it repeatedly, and he never could do it; I told him how much his brother would be gratified if I was able to tell him he was able to count half a hundred quills.

Did you try to teach him to count them?—Yes.

Was he able to do so?—No; he was not able to count them, even by scores or twenties.

Digitized by Google

Digitized by Google

Digitized by Google

When did he leave the school?—I cannot say whether it was at Christmas, 1776, or whether he continued part of 1777. I cannot say the precise time.

Did he go to Lancaster?—No.

Where did he go then?—He went to Mr. Croft.

ATTORNEY-GENERAL.—He went to Lancaster to visit his mother.

PARK, J.—And then to Gargrave.

He went to the south of England?—Yes.

To Weybridge?—I do not know, but he went afterwards to Gargrave.

Were you ever at Wennington Hall afterwards, visiting his brother?—Yes, I used to visit his brother Henry whilst he lived; he would send me an invitation.

You knew his brother Henry?—Yes, he was at the same school.

Was he a clever man?—Yes; he was a quick, sharp, active young man.

When you went on a visit to Hornby Castle, to see John Marsden, did you think him at all improved in intellect?—No, I did not think he had intellect.

Was he able to manage any concerns?—No, by no means.

You were always friends?—With the late John Marsden?

Yes?—I never was in company with him more than once, in the beginning of 1779 or 1780.

On that occasion did you go to Hornby Castle?—No.

Wennington Hall, was it?—Yes; it was in 1779 or 1780.

You never went to Hornby Castle?—I was there once and spoke to him only once.

You only saw him once since 1780, and that was at Hornby Castle?—No; it was in 1802 I saw him at Hornby Castle.

Had you seen Mr. Wright at Hornby Castle before that time?—Yes, I had, repeatedly, four or five times.

What had you seen Mr. Wright upon?—Respecting a school that was vacant at that time.

Did you apply to Mr. Wright for it?—Yes.

What did Mr. Wright say?—Upon the last visit I had there, Wright said, "Well, you shall have the school, and I shall now introduce you to Mr. Marsden."

Was that the time you saw Mr. Marsden?—Yes.

And the only time?—Yes.

That was in 1802?—It was in the month of September that year.

Did he recollect you?—Yes; he put out his hand and said, "Oh! dear, my old master."

Had you any conversation with him then?—He shook hands with me; he said, "Oh, dear, it is my old master, and he must have the school;" he took a glass of wine, and was walked out again by Mr. Wright.

Cross-examined by Mr. POLLOCK.—How many boys were at the school?—Which school?

At the Kirkby Lonsdale school?—There might be from sixty to ninety during the twelve years I was there; I was seven years a scholar there, and five years an usher.

You have had some eminent scholars there?—Yes.

Mr. John Bell, the King's counsel, was there, for instance?—Yes; he was there when I was there.

Digitized by Google

How long was he there?—I cannot tell exactly; he was there five or six years.

You became usher in 1776?—I did.

Was John Bell at the school then?—Yes, and had been there before.

How long before?—I cannot say exactly.

Two or three years, can you recollect?—He had been there two or three years before.

How old was he at that time?—I recollect him very well, he was lame.

How old was he then?—He might be about ten or eleven when he first came.

And how long did he continue there?—Five or six years.

He was there the same time that Mr. Marsden was there, was he?—He was.

How long was he there altogether, a few months or a year or two?—It most likely might be a year or two.

Was that the early part or the latter part of Bell's being there?—I cannot say.

The master, you say, tried to teach John Marsden the Latin Grammar?—Yes.

What Latin Grammar was it?—It was Lilley's Grammar.

PARK, J.—It is the same they teach at Westminster?

Mr. POLLOCK.—No, my lord; it is chiefly used at St. Paul's School; he was the first master—Lilley.

Had he learnt the English Grammar before he began to learn Latin?—That I do not know.

But the master set about endeavouring to drag him through the Latin?—Some part of the Latin tongue.

What part was he in?—He was in "Erasmus," Latin and English.

Was that in order to learn the Latin or English?—It was in order to give him a knowledge of the Latin tongue.

What is that book, "Erasmus," Latin and English—was it your school book?—Yes.

PARK, J.—It is a very common school-book; I do not know whether I learnt it or not. I am older than any of you; there is "Corderius," and then they give you "Erasmus."

You made him write out English fables,—were they English?—Yes.

And used he to copy them?—He wrote to him; he generally had a boy by his side to dictate two or three words at a time.

What sort of hand did he write?—It was the best accomplishment he had; where he had learnt that I do not know, but it was the best accomplishment he had.

Did he not write better than the other boys?—He was older than the other boys at school.

Did he not write better than some of them?—No; some of them wrote very well.

PARK, J.—He wrote better than John Bell; I never saw such a writer by any human being.

You gave him half-a-hundred quills to count?—Yes.

Did you expect that he would be able to do it?—Yes; I shewed him how to do it; there were sixty-three quills in number at that time.

Is that what was called half-a-hundred?—Yes; it was.

Digitized by Google

Digitized by Google

Digitized by Google

I do not wonder it puzzled him then; how did you teach him to count? —2, 4, 6, 8, 10, 12, 14, 16, 18, 20.

How did he count them?—I counted them over then; I then counted them by dividing them into scores, and he said, "Aye, aye," and then I tried him to count them all.

And was he able then to tell you the number of them altogether?—No.

What number was he able to count; could he do it?—He said at last, "I cannot make it out," after repeated trials.

Were you explaining to him that there were three score, and one over every score?—Yes.

Had he been acquainted with the term score before?—Yes; I told him there were twenty in a score.

But apparently he knew what twenty was?—Yes; apparently he did, but he could not count them.

You did not teach arithmetic at all?—No.

You did not teach John Bell arithmetic?—No.

Re-examined by the ATTORNEY-GENERAL.—What made you attempt to teach him arithmetic?—To try his intellect.

Dr. Ambrose Cookson sworn. Examined by MR. STARKIE.—I believe you are a physician?—Yes.

Residing at Lincoln?—Yes.

How long have you practised?—Fifty-two years.

Have you been a physician at the Lunatic Asylum there?—Yes; I have.

How long were you physician there?—In fact I am there now; I was ten years physician in ordinary, and resigned; and they appointed me consulting physician.

How long has that time expired, when you were physician in ordinary?—From the year 1820.

You have been in the habit of attending there ever since?—Yes.

Is that an asylum for all kinds of lunatics?—Yes.

Were you related to the late John Marsden?—Yes; I was.

How were you related?—I was second cousin; we were cousins once removed; my mother and Mr. Marsden's father were own cousins.

Were you acquainted with the late Mr. Henry Marsden, the elder brother?—Yes.

Did you know their mother, who was afterwards Mrs. Bayley?—Yes; but I had not seen her more than once.

By GURNEY, B.—What is your age?—Seventy-seven.

He must have been older than Mr. Marsden.

By Mr. STARKIE.—When and where did you first see John Marsden? —At his father's, in 1776; he was then about eighteen, and I was nineteen.

What was your opinion then, of his understanding?—I thought him a very weak young man.

How was he treated in his mother's family?—I only saw him two days; I saw he was treated as they would treat a young boy.

When did you see him after that time?—I saw him again at Leeds, in the house of my mother, in 1777; he was then on his way to Mr. Croft's.

Had you then a better opportunity of observing his character?—He dined with us there, and I saw him only that day; he only stayed that day.

In what way did he talk and converse that day?—A little wildly; but I do not recollect any particular subject at all that we conversed on.

Digitized by Google

Did you afterwards see him at Wennington Hall?—Yes, I did.

When was that?—In 1779; I was there three days.

Did you see much of him during those three days?—Of course, I saw a great deal of him.

What was your opinion then of him, as to his understanding?—He was very weak. I was a great deal more with the brother than with him.

Was the brother a clever man?—He was a very clever, gentlemanly man.

Is there any particular term that you give to that particular sort of weakness of John Marsden's?—We call it "connate imbecility." I considered it a very strong case of it.

Will you have the goodness to describe that?—Such persons as are connate imbeciles have no power of reasoning or discriminating; they may do little things mechanically; they have no power of mind at all in those cases. I never saw an instance of such a disease being curable; I never saw such a case cured. I rather think it is not to be cured. I would rather take a confirmed maniac under my care, with a better prospect of cure.

Have you had them, both publicly and privately, under your care?—Yes; both publicly and privately.

Do you find those persons capable of any improvement—those persons under that kind of weakness?—I never saw any instance of it.

When does that begin to be most remarkable—that kind of weakness—is it at first?—They always commence very early, from all that I have seen of them, from the birth of them.

As the body increases, what is the effect upon the mind?—The power of mind does not increase.

The faculties of the mind do not make progress with the growth of the body?—No.

In your experience, have persons, labouring under connate imbecility, a retentive memory?—Yes.

To a considerable extent?—Yes, upon some facts.

In respect to ordinary facts and respect to dates and names?—Yes, I should think so; but I really cannot speak as to that.

But, with respect to simple facts, the memory is good?—Yes, I have known instances of it.

They have memory, I believe, attended with a correspondent judgment of the mind?—No, it has nothing to do with the judgment.

Have those persons you allude to memory without any judgment?—Yes.

You told us that was your opinion, in Marsden's case?—Yes.

In your judgment, was he capable of managing his own affairs?—Certainly not.

Or making a will, or disposing of property?—Not in the least.

Have you heard read several letters, and copies of letters, written by John Marsden to Mr. Greene?—Yes, I have.

Have you also heard the letters read, written by him to William Dawson?—I heard all the letters.

Now, I ask you, whether, in your judgment of the human understanding, and from what you saw and knew of him, was he capable of composing those letters?—Certainly not.

Cross-examined by the ATTORNEY-GENERAL.—I suppose you mean, not any of them?—No, I do not mean to say so; there might be some.

Which could he have written?—I cannot say which, but there were some

Digitized by Google

Digitized by Google

Digitized by Google

that I am very certain he could not. That is changing the position upon me.

Do you think he could write any of the letters?—Some trifling letter.

Was there no one letter you heard read that he could have written from the beginning to the end?—I cannot say that.

Are you giving this opinion merely from hearing the letters read in Court?—Yes, sir.

Are you aware that copies of these letters may have been put into your hand any time within the last three years and a half?—I did hear them at York, and gave evidence similar to what I give now.

Do you mean to state that you believe he could not have written those letters?—I do not mean to say that; it is possible that there may be one or two of such letters that he could have written; when they required any powers of mind, he could not.

That is what you would call sometimes, *idem per idem*; you understand that?—Yes.

You say, when they required intellect or soul?—No; I did not use any such expression as soul; I said when they required any power of mind.

Do you mean to say, Dr. Cookson, that at York you gave no opinion of the composition of those letters?—Yes; I certainly did; that I did not think him capable of writing them.

Did you hear the letters read?—Yes; at York.

I beg to ask you, do you mean to represent that we have not here the short-hand writer's notes?

GURNEY, B.—It is not in Mr. Justice Park's notes.

Sir JAMES SCARLETT.—Does your lordship say it is not in his note?—That is one of those points we complain of that it is not. I do not see why we should refer to any other notes than the short-hand writer's notes.

GURNEY, B.—Have you any notes taken by yourself?

ATTORNEY-GENERAL.—No, my Lord.

By the ATTORNEY-GENERAL.—Was it on being called back you said so?—No; I never was called back at all. I gave no opinion at York.

Did you hear these letters read at York; by whom were they read?—I cannot say; they were read in court. I do not know whether it was by the Judge's associate, or by whom. It was in open court they were read.

Are you giving an opinion from what you heard read there, or here?—Both. There are letters read here that I never heard read before, and they confirm my opinion.

Was he able to write any part of those letters?—I think a complimentary letter or so, that did not require any exertion of mind.

That he was incapable of reasoning?—Exactly so.

When did you first put him down in the order of *connate imbeciles*?—Not when I first saw him. I did not know the nature of his complaint. After I had taken my degree—but at the time I first knew him, I was only beginning to study physic.

How old was he when you last saw him?—It was in 1779.

He was then twenty one?—Yes.

I think you said that at that time you did not take much notice of him?—Yes; from that time, but not the first time.

You never saw him but three times in your life?—Yes; I think I saw him at Wennington, though I do not recollect that I did.

You saw him three times that you have a distinct recollection of?—Yes.

Digitized by Google

For how long did you see him the first time?—I staid with his mother at Lancaster two days, and I staid at Wennington three days.

You were first at Lancaster two days?—Yes.

And one day at Leeds?—Yes.

Did he sleep at Leeds?—Yes; he slept there.

Did he sleep at your house?—Yes; I think he did.

You were on a visit at Lancaster to his mother?—Yes.

Did he dine at table?—It is so long since, that I cannot recollect that, but I should say that he did not then dine at the table: I should rather say that.

Did he dine at table with you either day?—I have no recollection of it.

Have you any recollection of having any meals with him?—Yes; he was always playing some rigs.

Have you any recollection of any thing he said?—No, not at all.

Or any thing that he did?—No; I think there was a kind of mischievousness about him, but he was kept quiet by his mother.

Have you any recollection of any thing mischievous he did, or a general impression of it?—He was a boy that required to be kept quiet.

Have you any recollection of any circumstance?—Not at all: it is only a general impression I speak of.

The second time you saw him was at Leeds?—Yes.

He dined with you then?—He did.

Have you any recollection of any thing he said then?—No, not the least; but he only talked wild. It is sixty or seventy years ago; I do not recollect it particularly.

Are you now, at the distance of sixty years, or seventy years, giving us only a general impression of what took place at Leeds?—Yes; only a general impression. It is not so long ago; it is within fifty or sixty years.

At Leeds; but it is fifty or sixty years that you speak only from a general impression?—Yes, certainly; I have no recollection of any thing he said or did particularly.

You came to Wennington the last time you saw him. I think you said that you did not then much attend to him?—I then saw more of him than at any other time. I had an opportunity likewise of taking more notice.

Did you not say that you did not much attend to him?—No; that was at Lancaster.

Did you not say to-day that you went to visit Henry Marsden, and did not much attend to him? did you not say, "I saw him at Wennington, in his brother's lifetime, and I did not pay much attention to him"?—I said, I was not much with him.

By GURNEY, B.—You said, "I had not much conversation with him,—I was a great deal with the brother, who was a very clever man"?—Yes.

By the ATTORNEY-GENERAL.—Did he then dine at the table?—Yes, he did.

Did he conduct himself with propriety?—He was always, I think, in mischief; and his aunt was always calling to him.

Do you mean, at the table he was in mischief?—Always in action.

What sort of action?—Not sitting still; moving about in his chair: so much so, that his aunt was always calling to him, "be quiet, and do not be a bad boy."

Was his brother there?—He was.

Digitized by Google

Digitized by Google

Digitized by Google

Did his brother take any notice of it?—No; I do not think he did. His brother was exceedingly kind to him.

Can you then recollect any thing he said or did; or are you only speaking from a general impression of that third visit?—From a general impression, certainly.

And the last of your general impressions was about 58 years ago?—Certainly, that was the last opportunity I had of seeing him.

However, it may not be so much, but half a century ago?—Yes.

Is connate imbecility a difficult thing for medical men to find out?—No, not at all. I was taking my medical degree at Edinburgh when I saw Mr. Marsden last. I was there four years.

Do you discover it at a glance?—I think I might: I went through the asylum here, the other day, and pointed out cases at once.

Nobody can be in society with them without discovering it immediately?—No, I do not think immediately; there are different degrees; I do not think any one could have found it out from Marsden, at once: he had more the manner of a gentleman than those people generally have.

How long would it have taken to find him out?—I should think, not ten minutes.

Were you about to say you tried him in any way?—No, I did not. I was quite satisfied from my general impression. I found he could not talk, and therefore I gave it up.

Have you any recollection of any thing you ever said to him?—No, not at this distance of time.

Do you know any of the family of the Dawsons—there is one called Dawson Cookson?—There are two, William and Dawson Cookson.

What is he?—A physician.

Where?—At Lincoln.

Was he at York?—Yes, he was, and at Lancaster, but not examined: he was subpœnaed this time, but cannot attend.

How are you related to the Dawsons?—Much the same as to Marsden—just in the same degree.

Did you know Mr. Dawson of St. Leonard's Hill?—The one that died, I knew him—he was my cousin.

Do you know his sons, the clergyman, the soldier, the barrister, and so on?—Yes. I saw one of them at York, and that was all that I saw of them.

Was it Frederic, the barrister?—Yes.

And Henry Dawson?—Yes, he was there, but he went away.

Did you see any of the rest of the family?—No, none.

Are any of them *connate imbeciles?*—No, I should think not. It does not go in families, I believe.

There are some of the Dawsons here now?—Yes; I believe so.

Are they not relations?—Yes, they are younger than us all.

There are some of them taking an interest in this business?—Very probably; there are two here.

Are they relations of yours?—I have said so.

Were the Dawsons you saw at York staying along with Admiral Tatham?—I cannot tell. I never saw them with Admiral Tatham but once.

Where was that?—In court at York.

Have you any reason to know that they were with Admiral Tatham, rather than with Mr. Lister Marsden?—I have no reason to know. I think

Digitized by Google

that Mr. Frederick Dawson introduced me to Admiral Tatham. I did not know him by sight, at first.

Who applied to you to become a witness?—Mr. Higgin first applied to me.

Was it Frederick that first introduced you to Admiral Tatham?—I think it was.

Re-examined by Mr. STARKIE.—You never saw Admiral Tatham since that time?—No, I have not; I did not even know him by sight.

You were nearly taking your degree, when you saw Mr. Marsden at Wennington Hall?—That was in 1779, and I took my degree in December, 1780.

You knew something of the nature of this disorder?—Yes, I did.

That was the time you were there three days?—Yes.

Was that the judgment you formed at the time?——Yes, it was.

By GURNEY, B.—The judgment you give to-day was the judgment you formed at that time?—Yes.

By Mr. STARKIE.—You had seen him twice before that?—Yes.

When you had seen him before, had you then a knowledge of the nature of this disorder?—No, I could not.

I ask you whether the state of his mind, which you observed at Wennington, corresponded with your former observation?—Exactly.

Did you observe, when you were at Wennington, in what manner he was treated by the family?—No; not at all.

Although you do not remember anything particular as to that, do you remember the fact of the aunt reproving him?—Yes.

In what way was he treated; as a boy—or how?—By his aunt; she seemed to me to be the only one that had control of him—not like a man, but like a boy, she spoke to him; nor were his actions manly.

Miss Dorothy Butler sworn. Examined by Mr. CRESSWELL.—I believe you live near Chester?—Yes, at Boughton, near the city of Chester.

Did your father live at Ridding?—Yes; he did.

That is about two miles from Wennington Hall?—Yes.

Was your father related to Alexander Butler, of Kirkland, near Garstang?—He was his second brother.

Were you acquainted with the family of Henry Marsden, at Wennington?—Yes; my father and mother were intimate with his father and mother.

Do you remember Henry Marsden taking possession of his property?—Yes.

Had his mother at that time married Colonel Bayley?—Yes, she had.

Do you remember Mrs. Cookson?—Yes; perfectly.

Did she come to reside at Wennington Hall?—She came on a visit.

How long was it after Henry Marsden took possession?—In a year or half a year after he took possession.

Do you remember John Marsden coming afterwards?—Yes; with Mr. Croft.

Do you remember about that time a person named Wright coming there?—I do not recollect when he came, but I remember George Wright being there as a servant.

Have you ever been there when he waited?—I remember perfectly his waiting once at tea when we were there.

Digitized by Google

Digitized by Google

Digitized by Google

Do you remember the death of Henry Marsden?—Yes.

Do you know whether he was long ill?—No, a short illness; my father and my uncle, the rector of Bentham, were both sent for when he died.

Bentham is not far from Wennington?—About three miles.

After Henry Marsden died, do you remember John Marsden riding over to Ridding?—Yes.

Was any person with him?—George Wright.

Did Mr. Marsden come in?—Yes.

Do you remember Mr. Marsden saying anything about Wright?—He said several times to my mother, "Mr. Wright is now my steward; Mr. Wright is at the door."

What said your mother to that observation?—I do not recollect her making an observation, but my father came in soon after.

By GURNEY, B.—When Mr. Marsden was there?—Yes, my lord.

By Mr. CRESSWELL.—Well?—I think my father said, "would Mr. Wright like a glass of ale;" he sat at the door and held his master's horse.

He was not invited into the house at that time?—No.

After that time do you remember seeing Mr. Wright at Wennington Hall?—Yes.

Was he acting then as servant or as the steward, or as an acquaintance?—There was a long interval without any intercourse during the change; they renewed it by Marsden's invitation; I remember once being there at a party; there was a long interval from the nature of the change; there was no intercourse at all, but when we did go we went by Marsden's invitation to a dinner party; I remember being there.

What was the nature of the change that occasioned that long interval without any intercourse; tell us what altercation took place, and other people will be able to think about it?—Mr. Wright being taken into the parlour, Mr. John Marsden not being considered by my father at all as being companionable, and Mr. Wright being taken into the parlour, the intercourse was unpleasant, and particularly as there were unpleasant reports.

The ATTORNEY-GENERAL.—We are not entitled to have those reports.

Mr. CRESSWELL.—It is the constant course of examination. Did you, in consequence of what you heard, decline going?

The ATTORNEY-GENERAL.—But not that it was disagreeable or alarming that you heard.

In consequence of something you heard, was your intercourse at Wennington Hall continued?—It was interrupted for some time.

By GURNEY, B.—How old was you then, if you have no objection to state your age now?—I am nearly seventy.

By Mr. CRESSWELL.—How old were you at the time you speak of?—I was not more than fifteen when I first knew the family.

Did you after that time occasionally see Mr. John Marsden?—Yes; in public sometimes.

At where?—At Kirkby Lonsdale—at the balls.

Was he polite and gentlemanly in manners?—Yes, to a certain degree.

Did you ever know him to attempt to perform on any musical instrument?—Yes; he volunteered to play a tune on the violin.

What sort of work did he make of it?—You would have thought it wretched; we never heard him go through one.

Did he ask you to drink wine at dinner?—Yes.

Did you ever dance with him?—Yes.

Digitized by Google

At Kirkby Lonsdale ?—Yes, at Kirkby Lonsdale.

How did he manage that ?—Very ill; he never had a figure perfect.

From what you saw of him, did he seem competent to manage his own concerns ?—Certainly not.

Had you seen him and Wright together ?—Yes.

When you saw them together, did he appear to have his own will, or to be under the control of Mr. Wright ?—Under the control of Mr. Wright.

By GURNEY, B.—Where was that ?—At Wennington Hall; I was at Hornby Castle once dining with some of the neighbours.

By Mr. CRESSWELL.—What was you going to say ?—Mr. Wright prevented him going on with anything ridiculous.

From what you saw of his manners when with Mr. Wright, did you think he could have ventured to have a will of his own ? (No answer.)

The ATTORNEY-GENERAL.—That is a question of opinion that cannot be put.

How often did you see him at Wennington with Wright ?—I have dined with him, but I do not know whether more than twice. It used to be a yearly invitation to Wennington.

As far as you saw of Mr. Marsden, was he capable of maintaining a conversation ?—I should say, no; because I never heard him.

Was he capable of making a common observation about the weather, and so on ?—Yes.

In your opinion, was he able to write a letter on business of his own head ?—I never saw him write, and I had no idea that he could write.

Do you mean by that, Miss Butler, that you had no idea that he could write a letter, or that he could compose a letter ?—That he could compose letters, I mean.

Cross-examined by the ATTORNEY-GENERAL.—Just a few questions, madam, I have to put to you. How long were your uncle and brother with Henry Marsden when he was ill ?—His illness was very short.

How far did you live from Wennington Hall then ?—We only called in occasionally.

How many days before his death had you heard of his illness ?—Not long before.

Had he died of illness, or from an accident ?—An illness, from cold and fever.

Did you know that he was ill before he died ?—We only heard of it.

Did you learn that he was ill before you learnt that he had died ?—I am not certain, but I thought I heard of it a day or two before.

Did you ever see George Wright wait, except once at tea ?—Never.

Had he then a livery on ?—I believe he had, but I do not recollect.

Do you mean to state positively that he had ?—No; I cannot recollect it.

Did you ever see him, at any other time, act as a menial servant, except waiting at tea.—Riding as a groom before Mr. Henry Marsden's death.

You have seen him on horseback ?—Yes.

When Henry Marsden has come, have you seen Wright come as a groom ?—I do not recollect.

How do you know that he acted as groom ?—I have seen him riding with John Marsden.

Was that after Henry Marsden's death, or before ?—After; a few times.

How soon after Henry Marsden's death, did John Marsden say that Wright was his steward ?—I do not recollect exactly how long it was afterwards.

Digitized by Google

Digitized by Google

Digitized by Google

Was it within a few months?—Yes; a few months, I dare say it was.

And he called him Mr. Wright?—Yes, he did.

Were you ever at Wennington Hall after the death of Henry, and before any interruption took place? did the interruption take place of your visiting immediately after Henry Marsden's death?—Yes.

Directly?—Yes.

Were you ever there at all for a year or two?—Yes; I think it must have been more than that; when Mrs. Cookson was very ill, we called to inquire.

By GURNEY, B.—How long was that after the death of Henry?—Two or three years.

By the ATTORNEY-GENERAL.—How often used you to go before Henry Marsden died; once a month, or once a week, or nearly every day did you use to interchange visits?—We called every week at one time.

From the death of Henry Marsden, was not that quite interrupted?—It was.

Had you heard before that that Wright was his steward?—Yes; there was a rumour.

Had you heard that Wright was his steward?—Yes.

How soon after the death of Henry did you hear that?—Within a month perhaps.

Now, about a year or two after, I think you went there?—We occasionally dined there.

You say you went on Marsden's invitation?—Yes, we went to his annual venison party.

Did he call, or send, or write?—He wrote a note.

Did you go?—Yes, I recollect going.

By GURNEY, B.—Did you and your father and mother go?—I do not know whether my mother went, but my father and my mother's sister went down.

By the ATTORNEY-GENERAL.—Did you go?—Yes.

And your sister too?—Yes.

After that, did you go there once a year?—They soon after removed; I do not think they were long at Wennington.

The ATTORNEY-GENERAL.—They were at Wennington four years after the death of Henry Marsden. I believe the correspondence will distinctly prove it, (that was in 1791, they were at Buxton,) and the other in 1799, and they did not remove to Hornby till the following year.

They were at Wennington Hall ten or twelve years?—I did not think they had been so long; I was a good deal from home, and my eldest sister entirely.

How often did you dine at Wennington Hall after Henry Marsden's death?—I do not recollect, above twice.

You went afterwards to Kirkby Lonsdale at the ball, and met him there? Yes.

How often had you met him there?—Several times.

At the Lancaster balls how often?—I do not recollect meeting him above once or twice at public places; I have seen him in public, chiefly at Kirkby Lonsdale.

Have you met him at the Lancaster balls?—I think it was at a card assembly.

Digitized by Google

Does a card assembly mean a ball?—They dance in one room, and play cards in the other; it is not merely card playing.

Have you seen him at the Lancaster balls or card assemblies?—I think once.

How often have you seen him at Kirkby Lonsdale at assemblies?—Perhaps three or four times.

Did you ever see him at the Lancaster assemblies in Mrs. Cookson's time?—I never saw him with her in public any where.

Where did you last see him?—At Hornby Castle.

But when?—Twenty-six years ago.

What occasion was it?—I was on a visit to some ladies in the neighbourhood, and they dined there, and I dined with them.

Who were they?—The two Misses Smith of Wray.

How far did they live from Hornby Castle?—Two miles.

Who were the party who went from their house to dine at Hornby?—The two Misses Smith.

Who did you meet there?—I do not recollect there was any one.

Who dined at the table?—I suppose Mrs. Wright was at the head of the table; I believe she sat at the head of the table, and Mr. Marsden at the bottom.

Do you remember Mr. Wright at all being there?—I did not.

You did not recollect that he was not there?—No.

Nor that he was?—No.

Who were the Misses Smith, are they two ladies of fortune?—Their brother was an eminent solicitor, and their uncle, Mr. Wildman, educated them all.

Their brother was Smith, a member of parliament?—I did not know, but he used to come down every year; one of them was married to Mr. Burrow, and the other to Mr. Hoskins, of Liverpool.

This was before their marriage?—Yes.

As far as you recollect the party, there was only Mrs. Wright at the top of the table, and Mr. Marsden at the bottom: were there ladies or gentlemen?—No; there was nobody else.

Did not Mr. Marsden behave with perfect propriety on that occasion?—He was very ridiculous; he fancied himself in love with the youngest Miss Smith.

If you recollect any thing, give us a little that you do recollect of what passed?—He made a great many bows from the door part of the room, and he asked her repeatedly, "how do you do, Miss Smith," at every bow he made. I do not recollect any thing he said, except drinking with her at dinner.

And he asked her how she did—any thing more?—I did not recollect any thing he said, except drinking with her at dinner.

And I suppose with all the ladies?—I do not recollect.

Was that the last time you ever saw him?—He was dressed in scarlet, and told me he was Lord of Hornby Castle, and seemed extremely happy.

Had he a scarlet coat on?—Yes; a hunting coat, or something of that sort.

How late did the ladies stop at dinner, and after dinner, some short time?—I do not recollect much about it, I do not know that they ever left the room, or whether they retired from the room.

Digitized by Google

Digitized by Google

Digitized by Google

You did not recollect how you spent the evening at all?—There was no conversation; we went very early home.

Did you collect from what passed in Marsden's presence whether that were a casual visit or an invitation?—They went upon invitation; he came to invite them; he came in the morning to invite them.

And they accepted his invitation?—Yes.

Mr. Fraser, the short-hand writer, verified and read the evidence of Dr. Campbell, from his notes taken on the trial at York.

Dr. Campbell sworn. Examined by the ATTORNEY-GENERAL.—You are a physician, at Lancaster?—Yes.

For how many years?—For half a century.

Did you know the mother of Marsden?—Yes; I knew the whole family. I know Mrs. Bayley, the mother, Henry Marsden, the brother, Col. Bayley, and Mrs. Cookson, the aunt.

Do you remember that young man, John Marsden, at Lancaster, during his mother's lifetime?—Perfectly well.

When he was at school there?—Yes; I have seen him frequently.

Did you notice him?—He used to be with his mother, and I used to see him frequently.

Did you make any remark upon the boy?—Yes; there was always something remarkable about him. I do not mean to say that he was either an idiot or a lunatic.

What was there remarkable about him?—His mind appeared to be naturally and constitutionally so weak, that his understanding was defective, and below the level of ordinary capacities.

What age was he at the time you speak of?—My observation will go from time to time, he was twelve years old, till he was eighteen or twenty, or thereabouts.

Did he appear to you to improve as he grew older?—No; I think that he did not. The defect that I think existed, did not appear to arise from any disease or accident—but was what we call connate, or born with him; and therefore if it did not arise from any accident or disease, it was likely to continue with him through life; as far as my observation has gone respecting him, that opinion has been verified.

In that case you mention some defect, that is connate, or born with the party, at what period does that appear?—When the faculties begin to unfold themselves in younger life, that defect becomes apparent by the faculties not being matured.

So that it appears at an early period of childhood?—Certainly.

You say it is not lunacy or idiotcy?—Neither.

There is a certain degree of discernment, but a deficiency of it?—Yes.

In those cases, or cases like this, does the intellect ever ripen or become matured?—I should suspect not. It never comes to the same maturity as that of the generality of mankind.

Did his mother treat him with affection and kindness?—I have seen a great deal of his mother; we were very intimate when she resided in Lancaster; and she used to visit at tea parties where I was, and she had some difficulty in restraining him and keeping him within proper bounds, on account of that peculiarity.

Did that continue all the time he remained with her?—Yes.

Digitized by Google

From twelve to eighteen?—Yes.

Now, we are informed, he quitted Lancaster afterwards, and went to his brother at Wennington?—Yes.

When his mother was in her last illness, do you remember going to Wennington?—Yes.

That was after the death of the elder brother?—The brother died in 1780: the mother was taken ill that year, and I attended her; she was extremely low-spirited and dejected, and continually calling out respecting her son: she said she had not known in what she had offended him; but that there would be nothing she would leave undone to be reconciled to him, but that he never came near her.

Mr. POLLOCK.—I do not see how this is evidence.

Mr. BROUGHAM.—We shall carry it to him.

PARK, J.—I understand, from the opening of the Attorney General, that what was stated then, came from Marsden himself; if not, it goes for nothing.

He had not been to see her?—No; in consequence of which, I went to Wennington with this message from his mother; I had an interview with him there.

Who was present?—Mrs. Cookson, the whole time.

What did you say?—I told him the situation of his mother; and I used every inducement in my power to prevail upon him to come to see her.

Did you tell him what she said?—Yes, I did.

That he had not been to see her, and she had not the least idea how she had offended him, and would do anything to be reconciled to him?—Yes.

And did you mention she was likely to die?—Yes, I did; she died the day afterwards.

And what answer did you get from him?—The only answer I could get was "My mother has not treated me like a gentleman;" and this was the constant answer he gave me to every entreaty I made to him.

Did he explain how?—No, nothing more than that. I certainly thought the answer deficient in point of sense as well as of affection, but I imputed it more to Mrs. Cookson, who appeared to agree with him in sentiment, than as arising from himself. I attributed that kind of answer to her presence.

Did she join you in the propriety of his going to see his mother in her dying moments?—No.

PARK J.—Mrs. Cookson was his father's sister.

Mr. ALDERSON.—Yes, my lord.

Witness.—I did not ascribe it to him altogether, but Mrs. Cookson seemed to agree with him.

Did Marsden or Mrs. Cookson explain how his mother had used him ill?—No, not at all, but he appeared to be entirely under her control, and I attributed his sentiments more to her than to him.

Then you came away?—Yes.

Did you tell him his mother was upon the point of death?—Yes.

Had you seen him occasionally during the long period he was at Hornby Castle?—Yes, I have seen him there; I have been asked to dine there once a year, at a sort of public dinner.

From the opportunities you had of seeing him since, did you perceive any change or improvement in his intellect?—No, I did not, he appeared precisely the same.

In your opinion was he a person who might very easily be controlled by

Digitized by Google

Digitized by Google

Digitized by Google

another?—He had that timidity of disposition that he appeared to be just that kind of character that was entirely under the influence of control.

Cross-examined by Mr. POLLOCK.—Did you ever attend him as a physician?—Never.

How many times have you been at Hornby Castle within the twenty or thirty years?—Not very often; half a dozen times perhaps is as much as I have been there; but I once in 1824 saw him when I was attending Mr. Wright, who was ill. I attended him professionally. I then saw Mr. Marsden.

Do you remember, on one occasion, your opinion being asked since by Mr. Sharp?—No; I do not remember.

You know Mr. Sharp?—Yes.

Did not Mr. Sharp apply to you, to know your opinion about him?—He might.

And did you not say you had seen so little of him, that your evidence would not turn the scale one way or other?—No; I do not think I said that, but I might say that the evidence I could give might balance as much one way as the other.

You remember stating that in conversation to Mr. Sharp?—In common conversation.

Did not Mr. Sharp go to you, and call upon you, at your own house?—Not professionally.

Where was it?—I do not recollect.

Did not Mr. Sharp, professionally, knowing that you had seen him, ask you some questions, and you said that your evidence might balance one way as well as the other?—I believe I might say so. One circumstance I was going to mention.

ATTORNEY-GENERAL.—I wish to ask a question.

PARK, J.—Did you wish to finish your answer to the question put by Mr. Pollock?—If not, then Mr. Attorney-Geueral may put his question.

By the ATTORNEY-GENERAL.—From this conversation you had with Mr. Sharp, had you reason to suppose that Mr. Sharp was wishing you to give evidence on his behalf?—No; the reason I gave was this—I attended Wright, at Hornby Castle; I saw Mr. Marsden, and he expressed himself with great sincerity, and he said "If Wright were to die, I do not know what would become of me, I know nothing of my own affairs."

Well sir?—"Mr Wright receives and pays every thing for me, if he were to die, I should be quite lost," I perfectly agreed with him in that respect. There is one fact I remember. I observed that Mrs. Cookson had taken the direction of Mr. Marsden. I did not for my own part see any thing in her so doing, nor in her calling in afterwards the assistance of Mr. Wright, in the management of his estate, because I believed that if he had been left to the force of his own unaided mind, he was incapable of taking care either of his person or of his property.

So that he required either a committee or a nurse?—Yes.

END OF VOL. I.

Digitized by Google

W. BARWICK, PRINTER, MARKET-STREET, LANCASTER.

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

Stanford Law Library
3 6105 062 192 500

Digitized by Google

Digitized by Google